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HEARING  
SENATE RULES COMMITTEE  
STATE OF CALIFORNIA



STATE CAPITOL  
ROOM 112  
SACRAMENTO, CALIFORNIA

THURSDAY, JANUARY 11, 1996  
10:32 A.M.

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STATE OF CALIFORNIA

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Reported by

Evelyn J. Mizak  
Shorthand Reporter

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APPEARANCESMEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR ROBERT BEVERLY, Vice Chair

SENATOR RUBEN AYALA

SENATOR JOHN LEWIS

SENATOR NICHOLAS PETRIS

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

MARJORIE M. BERTE, Director  
Department of Consumer Affairs

SENATOR DAN BOATWRIGHT

BRYAN E. CARVER, Member  
Occupational Safety and Health Appeals Board

MARC J. DEL PIERO, Member  
State Water Resources Control Board

OCTAVIA DIENER, Member  
California Transportation Commission

THOMAS C. NELSON, Member  
State Board of Forestry and Fire Protection

LIZ HENRY, Chair  
Board of Supervisors  
Mendocino County

CHARLES PETERSON, Member  
Board of Supervisors  
Mendocino County

LINDA HAGER BAILEY, Resident  
Mendocino County

1 SEIJI SUGAWARA, Member  
2 Board of Supervisors  
3 Mendocino County

4 JEFF ROMM, Professor  
5 University of California at Berkeley

6 ELYSSA ROSEN  
7 Sierra Club

8 ZEKE GRADER, Executive Director  
9 Pacific Coast Federation of Fishermen's Associations

10 RICHARD ROGERS, Member  
11 State Board of Forestry and Fire Protection



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## P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN LOCKYER: Let's start with Miss Berte.

Good morning. Do you have a comment you'd like to begin with.

MS. BERTE: I would, if you wouldn't mind.

CHAIRMAN LOCKYER: Please.

MS. BERTE: Mr. Chairman and Members, thank you for this opportunity to address you.

Since January of last year, I've enjoyed the challenge of serving the people of California as Director of Department of Consumer Affairs. The Department is principally an occupational regulatory body, licensing more than two million California professionals and businesses in 180 occupations through the 48 programs that are within the DCA umbrella.

I bring to this position 20 years of experience in management, involvement in regulated occupations, development of public policy, and I think most important, a commitment to balancing the needs consumers and businesses.

I'm a California native and have a deep appreciation for the uniqueness of our state and its consumers.

DCA's mission is quite simple, to be the best consumer protection agency in existence. We seek a competitive and fair market characterized by informed consumers, quality services, and choice of products.

That sounds nice, but what is important is how we implement those responsibilities. For the past five years, this administration has been instrumental in putting the consumer first

1 in consumer affairs. The philosophy I bring to the job means

4 goal. That means balancing needs of consumers with needs of  
5 regulated industries and professions. In other words, not using a  
6 pound of cure for an ounce of a problem. We seek very hard to  
7 identify risk for consumer harm, both physical and financial, and  
8 target resources to those priorities.

9 We think of the Department as being a tool kit containing  
10 a variety of tools to address different flaws in the marketplace.  
11 The judgement task for management is to select the most  
12 appropriate tool for a given problem. The broad categories of  
13 tools are licensing, standards and examinations prior to entrance  
14 into a profession, complaint mediation, enforcement, and education  
15 and information. This last tool, education and information, is  
16 very often under utilized as we focus on our traditional role as a  
17 licensing and enforcement agency. A lack of information leaves  
18 consumers less able to protect themselves, and is more likely to  
19 result in us having to use more costly enforcement  
20 measures.

21 Targeting information is a greater priority as I am the  
22 Director. Targeted or smart enforcement efforts will also be  
23 emphasized. Our method of doing this is researching the markets.  
24 DCA has developed an experimental process called the market  
25 condition assessment. I say experimental because this has not  
26 been done before to our knowledge, and we have no base line from  
27 which to measure improvement for consumers in the marketplace. We  
28 believe that if we are to be effective rather than irrelevant in



1 the consumer protection business, we need to know where the harm  
2 is occurring.

3 I've used the word target several times. It is one that  
4 drives our efforts. Resources are always scarce, budgets are cut.  
5 It's our goal to be as effective as possible while limiting costs.  
6 We have found that particularly enforcement, both consumers and  
7 industries benefit from a targeted strategy. We spend the largest  
8 share of our enforcement dollars going after negligent,  
9 incompetent, fraudulent practitioners.

10 In most markets, a small number of people cause the  
11 greatest amount of harm. The bad actors undermine and compete  
12 unfairly with the vast majority of businesses and professionals  
13 who are doing a good job for their customers. Targeting  
14 enforcement on those who do the harm, and unburdening the rest of  
15 the industry, makes good economic and competitive sense.

16 One of the major priorities for the Department over the  
17 next several years will be the sunset review process established  
18 by Senator McCorquodale's landmark 1994 legislation, SB 2036.  
19 This statute requires sunset review in the next three years for  
20 all boards within the DCA. Senator Ayala's Joint Legislative  
21 Sunset Review Committee has begun this process, with hearings  
22 recently completed on the first group of boards.

23 DCA's approach will be to carefully review the  
24 committee's findings, seek other appropriate input, and from a  
25 fundamental standpoint, review the necessity of each regulatory  
26 program. We will be considering the risks consumers face, the  
27 degree of risk, whether the structure and governance of the  
28 current regulatory program appropriately addresses those market

1   flaws.

2           We're looking forward to receiving Senator Ayala's  
3   committee report and will incorporate that in our findings to the  
4   Legislature.

5           One of the great challenges in managing the Department of  
6   Consumer Affairs is the structural autonomy of many of the  
7   regulatory programs within DCA. We worked hard, and I commit to  
8   continue working hard, to work closely with our boards and  
9   committees, with each unit within the Department to produce more  
10   cohesive and coordinated consumer protection agency.

11          I've described our regulatory philosophy, and I will skip  
12   comments on any other specific programs; however I would like to  
13   mention one other initiative that is a very high priority for DCA  
14   leadership: performance based budgeting. DCA has been in this  
15   pilot project since it was created by the Legislature two years  
16   ago. We view performance based budgeting responsiveness by  
17   Department's staff at all levels. This is about doing our job  
18   better, about squeezing more performance out of the same staff and  
19   the same budget.

20          As a participant in the pilot performance budgeting  
21   project, DCA has reorganized its functions along -- its processes  
22   along functional lines, established and are still always  
23   continuing to establish an improvement culture within the  
24   Department. We also want to be measured by our results, not by  
25   our inputs or processes.

26          This change in focus affects every aspect of our  
27   activities and how we conduct them. Everything from the very  
28   macro issue of the condition of consumers in the marketplace, to



1 the simple processes is how we move work through the  
2 organization.

3 The performance based budgeting project has forced us to  
4 measure our actions in terms of results. The Smog Check Two  
5 program is a good example. We're seeking to shift from managing a  
6 program that tests cars, to one that in fact results in clean  
7 air. The objective of the program is not to test for pollutants,  
8 but rather to reduce vehicle emissions. Once again, targeting is  
9 the key. The program is structured to identify those cars causing  
10 most of the pollution and make sure that they are repaired so that  
11 they drive clean.

12 Establishing a customer service attitude has been a long  
13 process. Being responsive to consumers is the cornerstone of that  
14 effort. In 1994, for example, the Department established a  
15 centralized 800 toll-free number for consumer calls, complaints,  
16 and referrals. Based on the volume being handled by the various  
17 programs at that time, we assumed that the volume for that line  
18 would be 400,000 calls a year. We are already well on our way to  
19 receiving a million calls this year, which is a management  
20 challenge in itself, and we take calls in more than one hundred  
21 languages.

22 We believe this is a measure of the need consumers have  
23 for information and for answers, and it certainly is clear that  
24 once we make ourselves available and responsive, they will use  
25 that service. We will, of course, commit and continue our efforts  
26 in that area.

27 Thank you for this opportunity to express my views and  
28 comments. I look forward to answering any questions you may have.

1           CHAIRMAN LOCKYER: Senator Boatwright, I believe, has a  
2 statement.

3           SENATOR BOATWRIGHT: Yes. Mr Chairman and Members, I  
4 appear in support of the confirmation of the Director of Consumer  
5 Affairs. I'm never sure whether it's Ms. or Mrs. I know she's  
6 married, so Ms. Berte.

7           But I've worked under several directors now, and I've had  
8 oversight of the Department of Consumer Affairs. I think I can  
9 say, and I think the people on the various committees -- Budget  
10 Committee, and the Sunset Review Committee that Senator Ayala  
11 chairs, and the Business and Professions Committee, all of which  
12 have some oversight and budget control over the Department of  
13 Consumer Affairs -- that Ms. Berte has been, of the many  
14 directors, and there's been a lot of them, the most outstanding.  
15 She has really, I think, tried to be innovative and to do the job  
16 that's supposed to be done, and that is to protect the consumers  
17 of the State of California.

18           And I think she's been outstanding with respect to the  
19 Cemetery and Funeral Boards. As you know, we've had for years  
20 problems with those boards and the misuse of the trust funds. And  
21 now those two boards are under the control of the Department of  
22 Consumer Affairs.

23           The Department's investigative arm has really, I think,  
24 done a good job, and they're working with the local district  
25 attorneys and grand juries. Indictments will follow. The trust  
26 funds have been misused; they've been misappropriated.

27           It takes a lot of courage to do this. I know personally,  
28 and I was there, that political pressure has been brought against



1 her to do things that are basically illegal. She has refused  
2 Legislators' requests in my presence to do things that are  
3 illegal. That takes some courage to do that, just to stand up for  
4 what you really know is right.

5 So, I'm here today to tell you that with respect to the  
6 important things that are important to me, and that is to protect  
7 the consumers of the State of California, she's done an  
8 outstanding job. And I think she'll continue to do that.

9 So I would urge her confirmation by this body and the  
10 entire Senate.

11 CHAIRMAN LOCKYER: Thank you, Senator Boatwright.  
12 Senator Ayala.

13 SENATOR AYALA: Senator Boatwright mentioned the Joint  
14 Legislative Committee to Review Boards and Commissions.

15 We went through a series of them a couple months ago.  
16 What was your impression? How can we improve that process?

17 MS. BERTE: We spent three days in those hearings,  
18 Senator.

19 It's a difficult task to review a regulatory program  
20 that's been in existence in California, for some of them fifty  
21 years, in a two-hour time period. It's going to be difficult even  
22 for us to do our internal review given time lines outlined in the  
23 statute.

24 We received extensive written comments and documentation  
25 from each of the boards with their specific recommendations. I  
26 think our time for testimony from other groups got squeezed.

27 I think you and I should work on how we receive a greater  
28 volume and opportunity of testimony from both industry groups and

1 consumer groups who would have something to say about the  
2 structure. In particular with sunset review, the question at  
3 issue is the governance structure of the autonomous boards.

4 We are holding more meetings now to gather input. It's  
5 just hard. There's a tremendous amount to look at where you have  
6 a program with eleven categories of licensees, and tens and in  
7 some cases hundreds of thousands of Californians licensed by a  
8 board affecting everyone. So, the time frames are difficult.

9 SENATOR AYALA: We're going to have another series of  
10 these hearings this coming year, and I'd like to get your input as  
11 to how we can streamline this process so it wouldn't take so much  
12 time as it did.

13 MS. BERT: I think we learned a lot from the first series  
14 of hearings, and that's helpful to us in tutoring us, I think, for  
15 the follow-up hearings.

16 SENATOR AYALA: Some of these boards and commissions are  
17 going to be phased out if we don't introduce legislation to  
18 continue them and will come under your jurisdiction.

19 Will you be able to handle it with the current budgets,  
20 or are you going to need additional personnel to do that?

21 MS. BERTE: I assume it depends on the board.

22 In most cases, if we were responsible for taking over a  
23 program, as we've done for Cemetery and Funeral Boards, we would  
24 attempt to live within the same means that the board has been  
25 living in, and target, again, prioritize and target those  
26 resources.

27 I think we would conduct an evaluation of how board's  
28 resources are being used, and how we might deploy them more



1 effectively, I think, would be first question and first analysis  
2 we would do.

3 The transition for Cemetery Board was a very wrenching  
4 one. It happened very suddenly in basically a one-day period.  
5 For the Funeral Board, we at least had a 90-day opportunity to  
6 plan the transition to do work with both our staff and their  
7 staff. It's been much smoother, and it's created for us a model  
8 for how we would bring aboard in.

9 I don't presume that we necessarily absorb them all  
10 totally into the Department. I think there may be separate  
11 models, depending on size of the board, what their resources and  
12 what their challenges are.

13 What the sunset legislation does is, if the Legislature  
14 chooses not to act, it eliminates only the board not the program.  
15 Then it forces the Department to then take over direct policy and  
16 management control of the regulatory program.

17 We want to ask the broader question, which is, not only  
18 the governance structure of autonomous board, but the actual  
19 regulatory program and various components.

20 Within the direct programs of the Department, we're  
21 looking at eliminating portions of certain bureaus and keeping  
22 other things, based on changes in the marketplace and the needs of  
23 consumers. So, we want to make that a very thorough evaluation.

24 SENATOR AYALA: Senator Boatwright also mentioned the  
25 Cemetery Board and the Board of Funeral Directors, and so forth.

26 What is status of that? I know it's under your control  
27 now. Where are we with that?

28 MS. BERTE: We have completed a full transition for both

1 of those boards and all of their functions into the Department.

2 We really only had absolute statutory authority to take  
3 over all of the jurisdiction responsibilities on January 1,  
4 although under a memorandum we took over the Cemetery Board in  
5 early October. We have fit all their responsibilities into our  
6 functional divisions for licensing, enforcement, mediation,  
7 consumer complaints. No transition is simple, but I think we've  
8 achieved it fairly smoothly, given the crisis particularly in the  
9 cemetery industry.

10 I think the important thing there is, we're going to be  
11 enormously aggressive in enforcement in the cemetery arena. Just  
12 a week ago, we did our first arrest. The gentleman who had stolen  
13 \$600-and-some thousand dollars from a trust fund of a cemetery in  
14 Long Beach was arraigned this week in Los Angeles. We're pleased  
15 to be moving forward quickly with some of those. I think that  
16 kind of activity will have a deterrent effect. Slow enforcement  
17 allows people to believe there's no enforcement. So, that'll be  
18 one of our objectives.

19 SENATOR AYALA: Thank you.

20 MS. BERTE: Thank you, Senator.

21 CHAIRMAN LOCKYER: Are there other questions from  
22 Members? I'll note that there's no opposition reflected in our  
23 file, and that that may be a sufficient reason, if there's no  
24 opposition present that would wish to add to the record, for us to  
25 entertain a motion on the matter.

26 SENATOR BEVERLY: Move we recommend confirmation.

27 CHAIRMAN LOCKYER: We have a motion to recommend  
28 confirmation. Please call the roll.



1 SECRETARY WEBB: Senator Ayala.

2 SENATOR AYALA: Aye.

3 SECRETARY WEBB: Ayala aye. Senator Lewis.

4 SENATOR LEWIS: Aye.

5 SECRETARY WEBB: Lewis aye. Senator Petris.

6 SENATOR PETRIS: Aye.

7 SECRETARY WEBB: Petris aye. Senator Beverly.

8 SENATOR BEVERLY: Aye.

9 SECRETARY WEBB: Beverly aye. Senator Lockyer.

10 CHAIRMAN LOCKYER: Aye.

11 SECRETARY WEBB: Lockyer aye. Five to zero.

12 MS. BERTE: Thank you, thank you very much.

13 CHAIRMAN LOCKYER: Mr. Carver is next, a member of OSHA.

14 Good morning, sir.

15 MR. CARVER: Good morning. Seems like I was here a  
16 couple weeks ago. It's been about a year.

17 CHAIRMAN LOCKYER: Do you want to start by adding  
18 anything?

19 MR. CARVER: Yes, sir, if I may. I believe I've given  
20 most of you, except Mr. Schmidt, my resume and my opening  
21 statements. I think you all have that.

22 Mr. Chairman and Members, I thank you for giving me the  
23 opportunity to come before you today and ask that you recommend  
24 the full Senate to confirm my appointment as the labor member to  
25 the OSHA Appeals Board.

26 There are three board members. I was appointed to the  
27 board in 1993 and confirmed by the Senate Rules Committee on  
28 January 4th, 1995 to serve the remaining one-year term vacated by

1 the previous labor member.

2 Elaine Donaldson, who is here today and who served as  
3 Chairman of the board since 1984, represented management until her  
4 retirement in December, 1995. Mrs. Donaldson has accepted a  
5 position, so she's not really retired, as a board member of the  
6 Pacific Stock Exchange.

7 The other board member who represents the public sector  
8 is Bill Duplissee. I'm sure most of you know Bill. I have been a  
9 member of the International Association of Machinists and  
10 Aerospace Workers Union since 1962. Subsequent to holding local  
11 union offices and positions, I was elected in 1986 as president  
12 one of the largest districts, District 727 in Southern  
13 California.

14 In 1987, I was elected President of the California  
15 Conference of Machinists and Aerospace Workers, AFL-CIO for the  
16 State of California, which included all Machinist Union members  
17 within the state, which included about 80,000 members.

18 While serving as President of District 727 and President  
19 of the California Conference of Machinists and Aerospace Workers,  
20 AFL-CIO, I organized joint labor and company health and safety  
21 programs.

22 Health and safety issues are very important to me. When  
23 my five siblings and I were youngsters in Texas and New Mexico, my  
24 parents took us out of school to pick cotton, pull bloom corn,  
25 harvest wheat, and perform other farm labor work. During those  
26 days, know one really considered the health and safety of the farm  
27 labor workers or anyone else.

28 I understand how important health and safety issues are



1 for those who toil in the fields of California; how important it  
2 is to have clean and ample toilet facilities, and how important it  
3 is to maintain dignity while performing work that most people  
4 refuse to do.

5 Our job is to ensure that not only the farm laborers, but  
6 all working men and women in California are provided with a  
7 healthy and safe work environment.

8 When Cal-OSHA was eliminated in 1987, the Machinists  
9 Union supported the initiative, Proposition 97 that California  
10 voters passed, reinstating Cal-OSHA in 1988. Thanks to the people  
11 California and the State Legislature, we have the best health and  
12 safety program in the world.

13 During time Cal-OSHA was eliminated, I worked with  
14 fed-OSHA. I can honestly state that California has a superior  
15 record over federal OSHA in regulating health and safety issues.

16 California serves as a health and safety model for other  
17 states. I wish to continue being a part of the California  
18 Occupational Safety and Health Appeals Board. Your support is  
19 appreciated.

20 In conclusion, I would like to thank Ms. Michel. You've  
21 been a great help to me, and very nice lady. I appreciate her  
22 help and support, and her staff for their kindness.

23 And I also wish to thank the Senate Rules Committee for  
24 your support last time, and ask that you can recommend my  
25 confirmation.

26 I'm open for any questions.

27 CHAIRMAN LOCKYER: I note also there is no opposition  
28 reflected in the record.

1           Let me ask if there is anyone present who would wish to  
2 so urge. If not, ask if there are questions from Members?  
3 Senator Petris.

4           SENATOR PETRIS: I'm looking at this background  
5 information regarding legislation pending in the Congress.

6           There's another attack on OSHA to weaken it by reducing  
7 the funding by fifteen percent, which in turn reduces funding for  
8 Cal-OSHA. And there's other legislation that would change our  
9 whole roll from enforcement to consultation.

10          Are you familiar with those proposals.

11          MR. CARVER: Not totally, but I'm a little familiar with  
12 it, yes.

13          SENATOR PETRIS: What's your view of it so far?

14          MR. CARVER: Well, of course I think that we shouldn't  
15 strip OSHA of their ability to enforce the safety and health laws  
16 that we have on our books. I think it's wrong to cut it. I  
17 disagree with the cuts, but we don't control that, and we have to  
18 accept the cuts, and doing so, we'll do the best we can, perform  
19 our duties.

20          SENATOR PETRIS: They're also proposing to cut the  
21 penalties on safety violations?

22          MR. CARVER: Well, it depends.

23          SENATOR PETRIS: How do you figure that?

24          MR. CARVER: I don't think they should cut the  
25 penalties. As you know -- I'm trying not to say anything you  
26 don't know -- but the Appeals Board is a separate entity from  
27 Cal-OSHA itself, so I don't know how exactly we're going to be  
28 affected with those cuts. I know the Cal-OSHA program will be

1 affected, and I'm sure we will to a small degree.

2 But I think to cut OSHA Funds in any way would be wrong.  
3 I think we've come a long way in California and the federal  
4 government in supporting workers' health and safety programs, and  
5 I'd like to see that continue.

6 SENATOR PETRIS: I'm familiar with the record and the  
7 fact, as you pointed out, we have probably the best in the  
8 country.

9 But I'm concerned about these acts by Congress which  
10 would limit your ability to do what the statute requires you to  
11 do.

12 MR. CARVER: I don't think it's going to limit our  
13 ability, just we're going to have to work harder.

14 SENATOR PETRIS: You'll have less staff?

15 MR. CARVER: Well, we can have less staff and --

16 SENATOR PETRIS: You don't have adequate staff  
17 now.

18 MR. CARVER: No, we don't.

19 SENATOR PETRIS: How many inspectors do you have now to  
20 cover every place in the state?

21 MR. CARVER: I'm not part of Cal-OSHA.

22 SENATOR PETRIS: I know, but it's the people whose  
23 appeals come to you.

24 MR. CARVER: I think we have ten judges. We have total  
25 staff have 27 people, and that includes four retired  
26 annuitants.

27 SENATOR PETRIS: Four what?

28 MR. CARVER: Four retired annuitants. We have one



1 retired judge who we kept on who handles the Long Beach area in  
2 Southern California. That's cost effective, in our opinion, to  
3 continue the annuitants. We would like to continue the annuitants  
4 so we can continue the good job, the good job that we're doing on  
5 the Appeals Board.

6 SENATOR PETRIS: What's an annuitant? Is that a retired  
7 person?

8 MR. CARVER: A retired person that's brought back to  
9 work.

10 CHAIRMAN LOCKYER: That's you next year. We're going to  
11 bring you back to work. Now I know what to call you, an  
12 annuitant. Honorable annuitant.

13 SENATOR PETRIS: Like in the Army, when you become an  
14 officer you're officially a gentleman. So, that would have to be  
15 by statute, I guess.

16 MR. CARVER: That's your job.

17 Thank you, Mr. Chairman.

18 CHAIRMAN LOCKYER: Senator Ayala.

19 SENATOR AYALA: Mr. Carver, there's a lot of talk  
20 About the methyl bromide special session that we're involved with  
21 today.

22 Your Board will hear appeals, not necessarily investigate  
23 any problems with carcinogens. But if there's appeals to this, if  
24 the Legislature and the Governor signs that bill, you will be  
25 getting those appeals in your committee?

26 MR. CARVER: I'm sure we will.

27 SENATOR AYALA: Violation of the Control Act of 1976.

28 MR. CARVER: I'm sure we will.

1           SENATOR AYALA: We'll be hearing those appeals from  
2 people out in the field?

3           MR. CARVER: I'm sure we would be, yes, sir.

4           CHAIRMAN LOCKYER: Have you heard any before? Have any  
5 methyl bromide issues come before the Appeals Board in the  
6 past?

7           MR. CARVER: No, I have not.

8           CHAIRMAN LOCKYER: What's the pleasure of the Committee.

9           MR. CARVER: May I say something? We didn't slop any  
10 hogs this time, did we? Remember last time? That was fun. I got  
11 a lot of comments on that.

12          SENATOR LEWIS: Move confirmation.

13          CHAIRMAN LOCKYER: We have a motion to confirm. May I  
14 substitute the prior roll? That'll be the order.

15          Thank you, sir good luck.

16          MR. CARVER: Thank you very much. Appreciate it.

17          CHAIRMAN LOCKYER: Next one is Mr. Del Piero for the  
18 Water Resources Control Board. Good morning.

19          MR. DEL PIERO: Good morning.

20          CHAIRMAN LOCKYER: Want to start with any comments.

21          MR. DEL PIERO: I've been following the drill, Mr.  
22 Chairman.

23          Mr. Chairman and Members of the Committee, my name Marc  
24 Del Piero, member of the California Water Resources Control Board.  
25 The State Water Resources Control Board is a five-member board  
26 established by the Porter-Cologne Act that is primarily  
27 responsible for the allocation of this state's surface water  
28 supplies, and is also responsible for protection of the water

1 quality of the waters within State of California.

2 There's five members of the Board. The appointments to  
3 the Board are categorical. I currently serve in the capacity as the  
4 attorney member of the Board.

5 Additionally, the board divides up a number of its  
6 responsibilities. I am currently Cal-EPA's designated coordinator  
7 for dredging issues throughout the State of California,  
8 particularly in regards to harbors and estuaries.

9 CHAIRMAN LOCKYER: If I can interrupt on that point.

10 Thank you for your assistance for Bay Area problems we've  
11 been having in the last few years.

12 MR. DEL PIERO: It was a long haul. I attended meetings  
13 for about three and a half years to get that completed. We're  
14 pretty close to a very favorable conclusion, I think, on behalf of  
15 all the ports.

16 Additionally, I work on wetlands issues for the Board.  
17 The two regional boards that I attend regularly and act as liaison  
18 on behalf of the State Board are the San Francisco Regional Water  
19 Quality Control Board and Lahoten Regional Water Quality Control  
20 Board that takes care of the eastern Sierras, Lake Tahoe all the  
21 way down to the northern Mojave.

22 Additionally, I oftentimes act in the capacity as hearing  
23 officer on some of the major water rights issues that come before  
24 the State Water Resources Control Board. In the last couple of  
25 years, I've acted as the hearing officer on major water rights  
26 determination hearing on the Mokelumne River dealing with East Bay  
27 MUD's water rights. And then the one that is probably best known  
28 is the hearing that I conducted for 40-plus days that addressed



1 the issues of water rights held by the City and County of Los  
2 Angeles on the tributaries to Mono Lake. That resulted in the  
3 Mono Lake Orders that was adopted about a year ago.

4 Mr. Chairman, that's a brief outline of what I do and  
5 what my responsibilities are. I'll be happy to address any  
6 questions that your Committee might have.

7 Before I do that, however, I do want to express my  
8 appreciation to Nancy Michel for all the assistance she extends,  
9 not only to me, but to every other individual who comes before  
10 your Committee. I've had the occasion to work with her twice, and  
11 since you all are her bosses, you ought to know that she really  
12 does a good job.

13 CHAIRMAN LOCKYER: That's nice, thank you. She may be an  
14 annuitant someday, but hopefully not soon.

15 I note, looking at your letters of support, that former  
16 Assemblyman Bagley says some nice things. But then he says,  
17 honorable and honest as me." So, I began to have some doubts  
18 about this matter.

19 [Laughter.]

20 CHAIRMAN LOCKYER: Anyhow, are there questions from  
21 Members.

22 MR. DEL PIERO: Does that mean I'm in trouble with the  
23 other Members of the Committee?

24 CHAIRMAN LOCKYER: Maybe. It made me look a little more  
25 closely.

26 You've been there now for a time and perhaps have some  
27 reflections on just the general structure and policy. If you were  
28 to just reflect on your experience and how maybe the law could be

1 improved or the Board and its operations run better, what would  
2 you indicate?

3 MR. DEL PIERO: There are -- we basically have two  
4 responsibilities; we've got three divisions, but we really have  
5 two responsibilities. One is deciding who gets what surface  
6 waters in the state, and the other is protecting water quality  
7 throughout the state.

8 In terms of the water quality issue, we have two  
9 divisions. One is the Division of Water Quality, and the other is  
10 the Clean Water Programs, which is the division of our board that  
11 administers all the grants and loan programs for sewage treatment  
12 plants, waste water reclamation facilities, water treatment  
13 facilities in some instances.

14 There are basically three things that, after having been  
15 there four years now, I'm somewhat concerned about. Historically  
16 our board has made great strides in terms of improving water  
17 quality within the state. That was primarily because in the 1970s  
18 and the 1980s, the State Legislature and the governors at that  
19 time supported a large amount of funding to be made available for  
20 loan programs, and earlier, even grants programs to effect  
21 construction of capital facilities to protect water quality.

22 And when I talk about that, I'm specifically addressing  
23 the issues of waste water treatment plants and reclamation  
24 facilities. Those moneys, for the most part, have expired. The  
25 vast majority of them were funded through bond acts, and those  
26 moneys, for the most part have expired.

27 This state has continued to grow at a remarkable rate.  
28 Even though during the '70s and particularly during the 80's we

1 developed a significant infrastructure capacity in terms of the  
2 treatment of waste water and sewage in this state -- and we're  
3 very creative, in all candor, in turning those waste water  
4 facilities into water resources through reclamation -- the fact of  
5 the matter is, local governments now, for whatever reason, are  
6 finding it more and more difficult to build that additional  
7 increment of capacity that will be necessary to serve the state in  
8 the 21st Century.

9 We are finding it somewhat frustrating because our funds  
10 that we've relied on historically have all been expired, and in  
11 all candor, some of those accounts will be empty as of July of  
12 this year.

13 So that's the first thing, Mr. Chairman, that I'm  
14 concerned about, is that in order for this state to sustain a  
15 strong enough element of growth to address the things that I read  
16 about that are concerns of all the Members of the State  
17 Legislature -- job generation, dealing with problems of education,  
18 dealing the over-all problems of getting California back to the  
19 pinnacle of economic activity that it enjoyed in previous  
20 decades -- infrastructure is clearly going to be one of the  
21 things that the State Legislature and, in fact, the people of the  
22 State of California have to come to grips with.

23 The economic engine that everyone around the world  
24 recognized as California was driven by an availability of  
25 resources and an infrastructure capacity that allowed for that  
26 growth to take place. And unless we renew that commitment into  
27 the 21st Century, we will not realize a return to that degree of  
28 growth and that degree of job generation in the future.



1           Secondly, it seems to me in terms of the water rights  
2 issues, we currently in the State of California use in excess of  
3 two million acre feet of water more than we have. That's through  
4 overdrafting groundwater basins primarily and through other  
5 excessive demands placed on our water supplies over and above what  
6 the All Mighty delivers to us on an annual basis, or what is in  
7 storage in the ground.

8           It is imperative, I think, for this state to come to  
9 grips with that issue. It is impossible for us to talk about the  
10 development of new water resources until we address the shortfall  
11 that we currently have. And it's as important for us to  
12 understand we are behind the eight ball in terms of being able to  
13 effectively address economic growth unless we've got water.

14           Mr. Chairman, I was a county supervisor for 11 years  
15 before the Governor was kind enough to deliver me from the  
16 purgatory of local government. And the one thing I know about in  
17 terms of development is that it's not driven by whether or not a  
18 city council or a board of supervisors approves a development.  
19 It's driven by water availability, sewage capacity, transportation  
20 infrastructure.

21           We have a significant problem in terms of water  
22 availability in this state. A far greater emphasis need to placed  
23 on waste water reclamation. A far greater emphasis needs to be  
24 placed on groundwater management, particularly the concept of  
25 groundwater banking, much like the water bank that was used down  
26 in Kern County in the past, where excess water that's available in  
27 wet years is stored, not necessarily in surface reservoirs,  
28 although I wouldn't foreclose that, although number of sites we

1 have available in the state, but there's a significant amount of  
2 potential storage capacity in groundwater aquifers throughout the  
3 state that is currently under-utilized or not utilized at all that  
4 would pose for us a tremendous opportunity in terms of storing  
5 water in wet years so that we have a buffer in those dry years,  
6 like the six-year drought that we all can remember all too  
7 vividly.

8 And finally, the third issue, Mr. Chairman, I think what  
9 probably needs to be addressed is that there needs to be a  
10 coordination between development that takes place -- and when I  
11 say development that takes place, I mean urbanization as well as  
12 agricultural development -- and available water supplies.

13 It was my experience -- and not only have I been involved  
14 in government, but I've been involved in the private sector as  
15 well in some businesses that my family owns -- it's my experience  
16 in both of those capacities that the thing that business wants  
17 more than anything else -- and it doesn't make any difference  
18 whether it's in California, Iowa or India -- the thing that  
19 business wants more than anything else is certainty. When a  
20 business, and I don't care if it's a silicon chip manufacturer in  
21 Santa Clara County or a tomato grower in Merced, or hotel in San  
22 Diego, when those people can't -- don't know whether or not they  
23 have a reliable water supply, it hurts their business. They are  
24 preoccupied with something other than what they should be doing,  
25 which is running their business effectively.

26 The only way to do that is by guaranteeing that the  
27 available water supply corresponds with the available demand. And  
28 that necessitates a degree of planning that this state has

1 historically not had. The State Department of Water Resources has  
2 done a good job, I think, in terms of trying to project out the  
3 demands on their system.

4 But in terms of the state as a whole, that effort has not  
5 taken place primarily because there's not been the political will  
6 to do that. I think in the next century, if we don't do that, we  
7 will face continuing shortages; we will face continuing declines  
8 in our environmental resources, and we will face continuing  
9 frustrations on the part of our business community because of the  
10 inability to guarantee supplies.

11 CHAIRMAN LOCKYER: Thank you for an informative answer.  
12 Are there other questions? Yes, Senator Petris.

13 SENATOR PETRIS: In the discussions that take place and  
14 you're projecting what the demands are going to be in the future,  
15 does the possibility of slowing down the growth enter into the  
16 talks.

17 We used to have, for a while, a no growth movement, which  
18 I don't support, but I support a not too much growth movement.

19 You know, I remember seeing signs in different parts of  
20 the Country when driving through an area that's sparsely  
21 populated, and it says "Town of such-and-such, population 11,000  
22 Watch us grow." Our slogan has been for centuries, watch us grow;  
23 we're going to grow.

24 Is that necessarily the best thing when we're in the  
25 present situation of limited resources?

26 MR. DEL PIERO: First of all, Senator Petris, Sam  
27 Karras told me to say good morning to you.

28 SENATOR PETRIS: Thank you. I withdraw the question.



1 Say hello to him.

2 MR. DEL PIERO: I will. I'm going to talk to him this  
3 afternoon.

4 But I'd like to answer your question.

5 Growth means a lot of things to a lot of people. Growth  
6 to a developer means the approval of a subdivision. Growth to the  
7 executive officer for the State Chamber of Commerce means a  
8 variety of things, including the generation of jobs. Growth to an  
9 educator means the increased number of children attending the  
10 school.

11 All of those things consume water. And so, if you're  
12 lucky like me, where you have the opportunity to look at growth  
13 from the narrow aspect of resource availability, big growth, small  
14 growth, fast growth or slow growth, or no growth, are terms that  
15 really don't have any definition anymore.

16 I think the thing that's most important for us to focus  
17 on in terms of the increased consumption of water is whether or  
18 not -- whether or not the decisions that are being made that  
19 irrevocably commit a fixed supply of water to something are  
20 decisions that truly benefit the State of California.

21 Part of what local government does and part of what your  
22 Legislature does, and a lot, frankly, of what we do in terms of  
23 rendering water rights decisions is determining who gets water.  
24 And although we don't have any land use authority, the fact of the  
25 matter is, if you have one hundred acre feet of water, a hundred  
26 acre feet of water can -- is enough water to take care of a  
27 manufacturing plant that'll produce a thousand jobs. One hundred  
28 acre feet of water is enough, at least in the North Bay Area, to

1 take care of a golf course, or a hundred acre feet of water is  
2 enough to take of about two hundred houses.

3 Now, in terms of growth, I guess the decision is, if you  
4 only have a hundred acre feet of water, you have to decide which  
5 ones of those are going to be the most -- have the greatest amount  
6 of benefit for the economy and greatest amount of benefit for the  
7 community that it serves and state as a whole.

8 The problem is, we've never had to make those kinds of  
9 choices before. We were never two million acre feet short  
10 before. That shortage has crept up on us over a period of time,  
11 and now we have a play catch up. We have to develop new and  
12 reliable water resources. Waste water reclamation is a great  
13 potential, but there are also water resoucrs that can also be  
14 developed and should, in fact, be evaluated in the future.

15 But when we do that, we also have to understand that  
16 there's limitations. Sooner or later we're going to reach what is  
17 economically the limit in terms of what we can develop, unless  
18 someone comes up with great way of desalting sea water.

19 And so, within that context, we have to make real hard  
20 decisions as to what kinds of economic activities that water  
21 resource is going to be committed to, to try and provide the  
22 greatest amount of benefit to our communities here in California.

23 So, that's really the key to it. It's not growth, no  
24 growth, slow growth, fast growth. It's what kind of growth it  
25 is. It's whether or not the growth is serving the population we  
26 already have here, or serving some population that may, in fact,  
27 come into the state from somewhere else in the future.

28 SENATOR PETRIS: How are we doing on conservation?

1 MR. DEL PIERO: We're doing pretty well in conservation,  
2 in all candor. There's been -- that's not to say that more  
3 couldn't be done, but when I first came on the Board in 1992,  
4 there were a lot of people -- and I don't mean to make a joke out  
5 of this -- but there were a lot of people who really couldn't  
6 spell conservation in certain parts of the state.

7 There has been a major effort made on the part of the  
8 League of Cities. There has been a major effort made on the part  
9 of the California Supervisors Association to impart to those  
10 governmental jurisdictions the responsibilities for them to  
11 implement water conservation strategies.

12 Additionally, organizations like the Metropolitan Water  
13 District in Southern California, and a lot of the agencies that  
14 receive water from the Delta through both the State Project as  
15 well as the Central Valley Project, because of the emphasis placed  
16 on water conservation by the Bureau of Reclamation and by the  
17 State Department of Water Resources, have implemented water  
18 conservation strategies that I think are, in fact, having some  
19 very beneficial results in terms of developing additional water  
20 through the use of conservation.

21 SENATOR PETRIS: Do we have a statewide goal to save so  
22 much --

23 MR. DEL PIERO: We have a statewide goal for --

24 SENATOR PETRIS: -- against that two million acre feet?

25 MR. DEL PIERO: No. We have a statewide goal for  
26 reclamation by the year 2000. That's going to be -- the success  
27 of that goal that was established by the State Legislature, in all  
28 candor, will be a function of how much money will be available in



1 the next several years to assist local governments in constructing  
2 and putting into operation waste water reclamation facilities.

3 SENATOR PETRIS: Should we have a specific goal?

4 MR. DEL PIERO: I think we should have a goal -- well,  
5 the Metropolitan Water District -- and you'll forgive me if I  
6 don't quote this directly -- adopted a goal years ago that said  
7 that there would be enough water for the needs of its member  
8 agencies, okay.

9 I think our goal ought to be that we have enough water to  
10 take care of the needs in the state, understanding that the needs  
11 are not -- the needs have to have some limitation, because if we  
12 don't, it's sort of like me telling my seven-year-old he can go to  
13 Toys R Us and don't worry about the bill. Sooner or later there's  
14 some limit that has to be placed on what is taking place.

15 That's why we really need to make value judgments as to  
16 where we're going to allocate water supplies. Are these water  
17 supplies that we've got, that we're able to generate through  
18 conservation, through reclamation, through the development of  
19 additional surface supplies, are these water supplies really going  
20 to be able to generate jobs so that people aren't in unemployment  
21 lines in the state? Are they going to be put to use so that  
22 instead of going to some economic function that really results in  
23 very few jobs and very little economic development, are they going  
24 to be put to use so that it generates a lot of jobs, and a lot of  
25 economic development, and a lot of growth.

26 SENATOR PETRIS: Thank you.

27 MR. DEL PIERO: Certainly.

28 CHAIRMAN LOCKYER: Senator Ayala.

1           SENATOR AYALA: I have a lot of questions, but I will  
2 just ask one or two.

3           The courts in recent times have declared that your board  
4 has the jurisdiction over all California waters, including the  
5 Bay.

6           Now we've got quality standards for the Delta, but not  
7 for the Bay. My understanding is that your board is now having  
8 hearings in terms of setting standards for the Bay.

9           I don't know why, but I was under the impression that  
10 Porter-Cologne took care of the Bay problems in terms of quality.

11           If indeed you set standards for the Bay for water  
12 quality, you're going to need additional fresh water going in  
13 there. Where are you going to get it.

14           MR. DEL PIERO: Well, let me -- that question had three  
15 parts.

16           CHAIRMAN LOCKYER: The right answer is not San  
17 Bernardino.

18           SENATOR AYALA: There's only so much water, and most of  
19 it is adjudicated.

20           MR. DEL PIERO: I know. Let me try and answer your  
21 question.

22           First of all, last May -- and I may be off by thirty  
23 days; it might have been the end of April or the first of June --  
24 we adopted the water quality plan for the Delta. That water  
25 quality plan for the Delta was a mechanism by which we implemented  
26 standards to deal with a lot of the problems that exist within the  
27 Delta.

28           Because we haven't been able to address a significant

1 portion of the water quality problems that exist in the Delta, it  
2 necessitated a significant increase in the fresh water flow  
3 through the Delta. That, in fact, provides a beneficial result in  
4 terms of --

5 SENATOR AYALA: Came from where? Where did that fresh  
6 water come from?

7 MR. DEL PIERO: Well, a big 800,000 acre feet of it came  
8 out of the Central Valley Project and the State Water Project.

9 SENATOR AYALA: But the other projects were not touched.

10 MR. DEL PIERO: They are not, and the reason is because  
11 originally when we -- when my board, long before I was around, I  
12 believe it was in 1978 or 1979, adopted Decision 1485 that set  
13 water quality standards in the Delta, the junior water rights  
14 holders in the state, or in the Central Valley Project for the  
15 most part -- I mean, there's some minor exceptions to that -- but  
16 the junior water rights holders in terms of that system are the  
17 Central Valley Project and the State Water Project. So, in terms  
18 of using priority of right, those agencies that have the junior  
19 water rights have historically been responsible for giving up  
20 their water earlier than those that had senior water rights.

21 We adopted a water quality plan for Delta back in the  
22 spring of last year. As a result of that, that has improved --  
23 that provides fresh water flows into San Francisco Bay that has a  
24 tendency of improving water quality there.

25 However, we did have a court case that ruled against us  
26 and overturned a plan known as the Enclosed Basin and Estuaries  
27 Plan that our board is responsible for adopting.

28 We adopt three water quality plans for the various



1 surface waters in the state. There's one called the Inland  
2 Surface Waters Plan; there's one called the Enclosed Bays and  
3 Estuaries Plan, and there's one called the Ocean Plan.

4 The Inland Surface Waters Plan and the Enclosed Basins  
5 and Estuaries Plan were overturned in a lawsuit last year. The  
6 court held that we had not complied with some technical  
7 requirements in terms of CEQA and, as a result, it was overturned.

8 Because of that, we went back and started over again, set  
9 up a citizens committee representing a variety of interests from  
10 throughout the State of California.

11 In the meantime, the Basin Plan for San Francisco, the  
12 San Francisco Regional Water Quality Control Board is determining  
13 what discharges take place into the San Francisco Bay until we get  
14 Enclosed Basins and Estuaries Plan updated.

15 The Regional Water Quality Control Board is responsible  
16 for monitoring and making sure that discharges into the Bay do not  
17 exceed Clean Water Act standards, nor do they exceed the standards  
18 that have been adopted into the Basin Plan for San Francisco Bay.

19 So, that's a long answer to a relatively short question.  
20 The problem is this. The Enclosed Basins and Estuaries Plan is in  
21 the process of being redeveloped. It will be several months  
22 before that is ready to come back to hearing for future adoption.

23 In the meantime, you've got the Regional Board doing its  
24 best to implement the plan and to protect water quality from the  
25 standpoint of point source discharges, and you have the water  
26 quality plan that was adopted for the Delta that is contributing  
27 some water into the Delta for the purposes of freshening up the  
28 Delta as well as providing some ancillary benefit to San Francisco

1 Bay.

2 SENATOR AYALA: Most of Central and Southern California  
3 draw from the Delta?

4 MR. DEL PIERO: Yes.

5 SENATOR AYALA: Except for San Francisco, with their  
6 Hetch Hetchy Canal and the East Bay stuff, you know, they don't  
7 even touch the Delta.

8 It seems to me that if you're going to sets standards for  
9 the Bay, you should be only triggered when a new source of water  
10 is developed to make sure that those who now have this water will  
11 not be losing the water that they're accustomed to using.

12 I don't have a problem with setting standards in the Bay.  
13 I don't know why they want standards in the Bay, but I can see the  
14 Delta. That's the water we all drink from. But the Bay, as I can  
15 see it, it's almost salt water. Nobody's convinced me that we've  
16 got to set standards for the Bay other than the Porter-Cologne  
17 problem.

18 MR. DEL PIERO: It's got to do, in all candor, that San  
19 Francisco Bay is a unique estuary. It provides not only a lot of  
20 recreation opportunities, but it provides a significant amount of  
21 habitat for environmental resources.

22 SENATOR AYALA: Down in South Bay --

23 MR. DEL PIERO: There's a lot of fishing that takes place  
24 in the Bay, and as a result of discharges into the southern part  
25 of San Francisco Bay, the toxicity in fish tissues has, in the  
26 past, been very, very high. There's been some improvement  
27 realized because of the efforts of the Regional Water Quality  
28 Control Board in terms of that, but there have been public health

1 problems in the past because of that.

2 SENATOR AYALA: I want to sit down with you.

3 MR. DEL PIERO: I'd be happy to sit down with you.

4 SENATOR AYALA: One more question. Do you think that  
5 under normal rainy seasons in California that the state is water  
6 bankrupt.

7 MR. DEL PIERO: Oh, I think last year about this time, I  
8 was a genius. There was so much rain coming down we couldn't --  
9 there was no possibility of us allocating everything that came  
10 down.

11 But in all candor, this state is generally a desert. And  
12 in order for us to continue to realize the luxury of living in the  
13 economy that we do, it necessitates us managing our water  
14 resources very effectively.

15 In order for us to sustain growth in the future, we're  
16 going to have to be smarter. My grandfather used to say, in order  
17 to stay the same, you have to change. We have to change. In  
18 order for us to stay successful we have to get smarter.

19 SENATOR AYALA: During droughts, everybody suffers, but  
20 I'm talking about a normal rainy season.

21 It seems to me that all we need is new transmission lines  
22 from an area of abundance to an area of need without hurting the  
23 area of origin. I think we can do that if we just get the  
24 environmentalists out of the way and all these other people. Let  
25 the engineers, and the geologists, and the experts figure it out,  
26 and we'll get it done.

27 CHAIRMAN LOCKYER: You didn't have to respond.

28 Any further questions? Yes, sir.



1           SENATOR LEWIS: What is the disparity of the price of  
2 water in the State of California?

3           MR. DEL PIERO: The disparity?

4           SENATOR LEWIS: Of the price. Like in parts of Southern  
5 California, they're getting hundreds of dollars per acre feet. In  
6 other parts of the state it's much cheaper.

7           Can you give me a read on that?

8           MR. DEL PIERO: Senator, I know of some places in this  
9 state where water costs about five bucks an acre foot. And I know  
10 in some places in this state where water -- new sources of water,  
11 primarily through reclamation, are costing seventeen hundred  
12 dollars per acre foot.

13           Those places where water is very inexpensive -- those  
14 places where water is very inexpensive, the economic activities  
15 that go on there tend to not be economic activities that generate  
16 a significant amount of economic growth.

17           That's probably an unartful way of characterizing it, but  
18 this is what I mean. The places where they can afford to spend  
19 seventeen hundred dollars on reclaimed water are places in the  
20 southland where the water is going for major industrial or  
21 commercial activities.

22           My dad has been a lettuce grower for fifty years. He  
23 couldn't afford seventeen hundred dollar an acre foot lettuce --  
24 water. It's just not a realistic possibility.

25           So, the range is significant. Dependent upon the  
26 location of the water and the cost, it has a direct impact on the  
27 economic activities.

28           SENATOR LEWIS: It strikes me, though, that when you have

1 disparity -- in some places, as you mentioned, five dollars an  
2 acre foot versus seventeen hundred dollars -- that the pricing  
3 mechanism is screwed up.

4 MR. DEL PIERO: Well, the pricing mechanism is a function  
5 not so much of suppliers. It's a function of who's got a water  
6 right.

7 When I talk about five dollars an acre foot, you're  
8 talking about, for the most part, people who have riparian water  
9 rights in the northern portion of the Sacramento Valley. I mean,  
10 if you have overlying -- if you have groundwater rights, if you  
11 own a piece of property that's underlain by a significant  
12 groundwater aquifer, basically the cost of water to you, since you  
13 purchased it with the fee title to your property, is whatever it  
14 costs you to pay PG&E or Southern California Edison, or whatever  
15 other power company it is, to run your pump.

16 Seventeen hundred dollars an acre foot is a cost that  
17 would be generated someplace down in southern Orange County or  
18 northern San Diego County as part of a reclamation project.

19 So, you can't do a direct price cost comparison because  
20 it's all tied up in where the water rights are as well.

21 SENATOR LEWIS: But to the degree that we don't have  
22 enough water in the State of California to meet our potential  
23 growth, or it's causing problems, could it be that part of the  
24 problem is that in certain parts of the state, water's priced too  
25 cheaply?

26 MR. DEL PIERO: I don't know how to answer that, because  
27 I guess the question is, how much do you want to pay for a jar of  
28 strawberry jam.

1           It's hard to say water is priced too cheaply because it  
2 depends on what economic activity is going on there. If the water  
3 is seventeen hundred dollars an acre foot, you won't grow  
4 strawberries.

5           If it's seventeen hundred dollars an acre foot, you may  
6 be able to build a hotel on the beach in San Diego. If it's a  
7 hundred fifty dollars an acre foot, no.

8           If it's two hundred and fifty dollars an acre foot, this  
9 is a very precise number, you can grow artichokes and still  
10 realize a profit. If it's three hundred you can't.

11          So, in terms of that, if it's sixteen hundred dollars an  
12 acre foot, you can manufacture silicon wafers. So, in terms of  
13 the cost, the costs are probably as myriad as the economic  
14 activities that go on throughout the state.

15          When I was talking earlier about cost comparisons and  
16 supply around the State of California, the decisions in terms of  
17 growth that have to be made is whether or not we're going to  
18 continue delivering water for functions that don't have a  
19 significant amount of job generation as opposed to delivering  
20 water to functions that do.

21          SENATOR LEWIS: But in a macro sense, it seems to me  
22 that --

23          MR. DEL PIERO: In a macro sense, you're right. If you  
24 discount water rights, the discrepancy in terms of cost would  
25 cause one to believe that there's a real problem.

26          SENATOR LEWIS: To the degree that water might be under  
27 priced in some areas that would tend to support over consumption?

28          MR. DEL PIERO: I don't I think -- Senator, if I could



1 respond to that, I think you'd find whenever that issue comes up,  
2 every user will argue that they are not using more water than they  
3 need. We hear that regularly.

4 No one wants to give up their water right. Know one  
5 would give up their water right, as far as I know, for any reason  
6 unless it's for money. And that's why there's been a market in  
7 the last several years in terms of water transfers.

8 In fact, in the future, this state may realize a greater  
9 amount of water transfers so long as the environmental issues can  
10 be addressed.

11 SENATOR LEWIS: Thanks.

12 CHAIRMAN LOCKYER: Any other questions.

13 I note also there's no opposition and a wide range of  
14 support from a variety of perspectives. You've done an excellent  
15 job engaging with us in discussing some of these things.

16 MR. DEL PIERO: Do you have any questions?

17 CHAIRMAN LOCKYER: I have lots, but I'm sort of watching  
18 the clock. I have a responsibility to get a lot done here before  
19 1:00 p.m.

20 What's the pleasure?

21 SENATOR AYALA: I'll move the nomination of Mr. Del  
22 Piero.

23 CHAIRMAN LOCKYER: We have a motion. Call the roll.

24 SECRETARY WEBB: Senator Ayala.

25 SENATOR AYALA: Aye.

26 SECRETARY WEBB: Ayala aye. Senator Lewis.

27 SENATOR LEWIS: Aye.

28 SECRETARY WEBB: Lewis aye. Senator Petris.

1 SENATOR PETRIS: Aye.

2 SECRETARY WEBB: Petris aye. Senator Beverly.

3 SENATOR BEVERLY: Aye.

4 SECRETARY WEBB: Beverly aye. Senator Lockyer.

5 CHAIRMAN LOCKYER: Aye.

6 SECRETARY WEBB: Lockyer aye. Five to zero.

7 CHAIRMAN LOCKYER: Thank you.

8 MR. DEL PIERO: Thank you very much, Mr. Chairman.

9 CHAIRMAN LOCKYER: Ms. Diener is next for CTC. Hello  
10 again.

11 MS. DIENER: Good morning.

12 CHAIRMAN LOCKYER: Did you wish to begin with any comment  
13 at all?

14 MS. DIENER: I would only like the comment that I have  
15 served one term on the Transportation Commission. I am now coming  
16 before you today to be confirmed for a second term.

17 I have taken my responsibilities with the Commission very  
18 seriously in representing the public interests for adopting  
19 programs and policies that enhance transportation. And I would  
20 appreciate your confirmation today.

21 CHAIRMAN LOCKYER: What would you want to tell policy  
22 makers about what you've learned as a member of the Commission in  
23 terms of problems that need to be addressed, things that would  
24 make your job better.

25 MS. DIENER: Well, you could always send money; that  
26 would help.

27 CHAIRMAN LOCKYER: Okay, we've heard that before.

28 MS. DIENER: I'm sure you hear that from everyone.

1           As you know, in the last four years since the blueprint  
2 legislation was passed in 1989, which was really to take us into  
3 the 21st Century, it was a very good program. However, there have  
4 been many changes that have affected the program as we felt it  
5 would take us into the 21st Century.

6           With the earthquakes and many other things that have  
7 happened, it has really impacted transportation and the funding of  
8 our different programs. I think the Commission has done a good  
9 job in living within that blueprint legislation; however, we are  
10 going to 1996 STIP hearings, and there is financial problems that  
11 are affecting the programs.

12           CHAIRMAN LOCKYER: Does the make-up of the Commission  
13 seem to make sense to you? If you were starting over again, are  
14 there ways you'd make it different?

15           MS. DIENER: It seems to work very well. There seems to  
16 be representatives from up and down the State of California, both  
17 north, south, and central, and I represent the Central Valley in  
18 those terms, and from various professions. So, I think it has  
19 been a good make-up.

20           CHAIRMAN LOCKYER: We haven't gotten rid of the  
21 Livingston light yet though?

22           MS. DIENER: No, but they're working on it. I usually  
23 drive back and forth to Sacramento, and so I'm very much aware of  
24 the progress that is being made. It's coming along very well.

25           CHAIRMAN LOCKYER: Sometime in the next century.

26           MS. DIENER? No, no. I hope it'll be long before  
27 that.

28           CHAIRMAN LOCKYER: Other questions from Members? Senator



1 Petris.

2 SENATOR PETRIS: Yes, I'm interested in the capital  
3 corridor, and other transportation efforts which we've adopted in  
4 order to offer more services for travel by rail.

5 I understand you've been strongly opposed to funding the  
6 Amtrak capital. I'm interested because they serve the East Bay.  
7 That's where I live and serve the local people.

8 MS. DIENER: I would like to maybe rephrase that just a  
9 little bit, in that I have not been strongly against serving any  
10 -- I'm very much in favor mass transportation. Chaired the first  
11 rail committee of our Transportation Commission. I would very  
12 much like to see Amtrak come all the way to Sacramento and up  
13 through Northern California.

14 I think that we are doing a lot of work on the capitols  
15 right now, and I think there was a problem with justifying adding  
16 a fourth train at this time, until we can improve the service.  
17 Because only when we improve service will we get people to  
18 actually ride on the trains.

19 SENATOR PETRIS: What's the problem with the service?

20 MS. DIENER: They're doing a lot of track work right now.  
21 The trains were not necessarily running on time. They were late.  
22 I've had a lot of complaints about the timeliness of the train  
23 service. From what I could find out, it had a lot to do with the  
24 fact that a lot of work was being done on the tracks, which was  
25 holding up some of the trains.

26 SENATOR PETRIS: My understanding is, we provided some  
27 money, 56 million for the capital improvement program for the  
28 corridor, and there was an agreement between Caltrans and the

1 Southern Pacific supporting it. It would have cut travel time and  
2 allowed more trips per day, twenty round trips per day. But the  
3 CTC blocked the funding.

4 Is that because of the track work that was going on?

5 MS. DIENER: No, I'm sorry. I guess I was referring to  
6 the San Joaquin, and you were talking about the capitols.

7 No, that, I believe is a little bit different. Actually,  
8 the Commission has been in favor of the capitols. However, we  
9 really feel that we have to reserve capacity for commuter use  
10 also.

11 I believe there's going to be an item coming up for us in  
12 January, in our January meeting.

13 SENATOR PETRIS: Well, when we get to 20 round trips per  
14 day, I guess we're including commuters. That's not clear here in  
15 my note.

16 Last year, the Commission also refused to allocate funds  
17 that had all ready been budgeted to the capitols by Legislature  
18 and the Governor. And the CTC said no.

19 They blocked, previously in '94, they blocked funding for  
20 the \$56 million capital improvement program.

21 I'm wondering why, since it's gone through such a long  
22 process to be developed, approved, and negotiated and so forth,  
23 it looks like a hostility to intercity rail service.

24 MS. DIENER: It's my understanding that we have passed  
25 all of the Proposition 116 funds for the capitals, and we have had  
26 a few problems, as I said, where we wanted to be sure that we  
27 reserved the capacity for the commuter, to make sure that public  
28 resources were being used correctly.

1           SENATOR PETRIS: What does that mean? Used on some other  
2 route?

3           MS. DIENER: No, no. Just that the resources were being  
4 used in order to preserve the capacity.

5           SENATOR PETRIS: What was the problem? They were not  
6 being used for that purpose?

7           MS. DIENER: No, it was being discussed, and we wanted to  
8 be sure that it was.

9           SENATOR PETRIS: So there was no evidence that it was  
10 being improperly used or improperly planned, so why the delay?

11          MS. DIENER: The delay was at that time that we didn't  
12 know.

13          SENATOR PETRIS: How long did it take you to find out?

14          MS. DIENER: Well, sometimes these things have to be  
15 negotiated.

16          SENATOR PETRIS: Was it?

17          MS. DIENER: We'll know in January. As I mentioned to  
18 you, this is coming up at our January meeting.

19          SENATOR PETRIS: What's happening in the meantime? Have  
20 you had further meetings with Amtrak?

21          MS. DIENER: I believe that the Department has. We have  
22 met with Amtrak, but not on this issue.

23          SENATOR PETRIS: So, your discussions, I suppose, are  
24 intended to resolve that between the CTC and the Caltrans people  
25 and Southern Pacific?

26          MS. DIENER: And the Department.

27          SENATOR PETRIS: And the Department. That will be  
28 resumed in January?



1 MS. DIENER: That's correct.

2 SENATOR PETRIS: Before this month is over?

3 MS. DIENER: That's correct.

4 SENATOR PETRIS: We're talking about, from where I sit,  
5 in order to get some funding measure adopted, it takes a lot of  
6 negotiation to begin with, and a long process in both Houses, and  
7 sometimes a vote of the people as well. It just means an  
8 exhaustive, long-range of effort, and then it gets blocked. That  
9 becomes very frustrating.

10 I would think there'd be some effort to speed that up.

11 Now, is your current problem a need for improvement of  
12 the tracks? Is that still a problem?

13 MS. DIENER: I don't think that's a part of the problem  
14 that you mentioned earlier.

15 SENATOR PETRIS: That's a different line, okay.

16 Does the Commission agree that we need more frequent  
17 service and more rider-friendly service or not?

18 MS. DIENER: Yes, that's what I was mentioning earlier,  
19 that I think we're all working very hard to improve the service in  
20 the whole State of California. And we've worked very closely with  
21 Amtrak, in asking them to come before us and give us information  
22 as to what they're doing with their business plan, what they're  
23 doing to improve the situation that exists in California.

24 SENATOR PETRIS: How does this work? You have these  
25 meetings. You're in charge of the funds that have been voted on  
26 by the people, so you do the allocating to Amtrak, for example, to  
27 do this and that. But if you feel they're not doing it properly,  
28 or their plan is not very good, then you will withhold the funds,

1 I assume, until they get the right plan.

2 MS. DIENER: That's why a lot of this is done through  
3 Caltrans.

4 SENATOR PETRIS: Who has the final word, Caltrans or you?

5 MS. DIENER: It's the Commission.

6 SENATOR PETRIS: How serious is the loss of federal money  
7 been? Is that a big obstacle, or have you been able to work  
8 around it?

9 MS. DIENER: No, it is a very big issue, and it's one  
10 that we're working on. We feel that there's several things that  
11 could be done to enhance.

12 For example, some of the federal regulations, if they  
13 could be given back to the State of California in terms of some of  
14 the environmental things that need to be done, if they could put  
15 some of the duplication, the things that have to be done by the  
16 state and also approved by the federal government, if they could  
17 give that back to just the state, that would improve and expediate  
18 some of these projects so that we can get them done quicker.

19 ISTEPA has not been fully funded in the last few years,  
20 if that could be brought up to standard. All of those things  
21 would help greatly.

22 SENATOR PETRIS: Thank you.

23 CHAIRMAN LOCKYER: Senator Ayala.

24 SENATOR AYALA: There's a four and a half billion dollar  
25 shortfall in STIP. Has the Commission discussed that problem on  
26 how they can resolve it? What methods do they hope will be --  
27 for all intents and purposes, STIP doesn't exist if you're that  
28 much in the hole.

1 MS. DIENER: The Commission has discussed this problem at  
2 length. We have, in our report to the Legislature in the last two  
3 years, reflected some of our thoughts and ideas as to  
4 recommendations that the Legislature might move forward on.

5 It's of great concern to us. I think this is really the  
6 key year, 1996. We have been able to fully fund most projects up  
7 until now, but it looks like we will be, in '96, ten to eleven  
8 percent of projects will not be able to be funded.

9 The thing that could make the difference is the seismic  
10 retrofit bond measure that is on the ballot. That could put as  
11 much as a billion dollars back into transportation.

12 SENATOR AYALA: Are you talking about the bridge  
13 retrofit? That's a bond issue. You prefer a bond issue over  
14 sales tax.

15 MS. DIENER: No, this is the one that will be --

16 SENATOR AYALA: I understand, but I'm asking about you.  
17 What do you prefer as a way to fund these projects, a bond issue  
18 or a gasoline sales tax like we did in San Francisco?

19 MS. DIENER: I think there's many ways. There's  
20 congestion tax fees; there's user fees.

21 SENATOR AYALA: Which do you prefer?

22 MS. DIENER: Which do I prefer? Personally, I don't feel  
23 at this time that we need to raise the state sales tax on gas.

24 SENATOR AYALA: But a bond issue's okay?

25 MS. DIENER: The seismic retrofit bond, yes, I think  
26 that's going to benefit our entire infrastructure up and down the  
27 State of California.

28 SENATOR AYALA: People forty years from now paying for



1 it, as opposed to a sales tax, like in San Francisco, that's over  
2 in three or four years and it's gone. You prefer a long-range  
3 funding of these projects?

4 MS. DIENER: For the seismic retrofit, yes, I  
5 do.

6 SENATOR AYALA: People will be paying, and they don't  
7 know what they're paying for and what they're retrofitting?

8 MS. DIENER: Well, they're retrofitting all of the  
9 bridges in the State of California.

10 SENATOR AYALA: I know, but they're going to be paying  
11 for it 30 or 40 years to amortize the bonds, and by that time,  
12 people who are out there in the workforce won't even know what  
13 they're paying for.

14 If they had sales tax, it seems to me it would be over  
15 within three or four years, and get the job done, on their way.

16 But you prefer a bond issue?

17 MS. DIENER: In this particular instance, yes, I do.

18 SENATOR AYALA: Thank you.

19 CHAIRMAN LOCKYER: Other questions?

20 I'll note no opposition in the file, unless there's  
21 someone present who wishes to add something to the record. I'll  
22 entertain a motion.

23 SENATOR BEVERLY: Senator Maddy is a strong supporter of  
24 the nominee.

25 CHAIRMAN LOCKYER: Yes, he is.

26 SENATOR BEVERLY: I move we recommend confirmation.

27 CHAIRMAN LOCKYER: Okay, call the roll, please.

28 SECRETARY WEBB: Senator Ayala.

1 SENATOR AYALA: Aye.

2 SECRETARY WEBB: Ayala aye. Senator Lewis. Senator  
3 Petris.

4 SENATOR PETRIS: Aye.

5 SECRETARY WEBB: Petris aye. Senator Beverly.

6 SENATOR BEVERLY: Aye.

7 SECRETARY WEBB: Beverly aye. Senator Lockyer.

8 CHAIRMAN LOCKYER: Aye.

9 SECRETARY WEBB: Lockyer aye.

10 CHAIRMAN LOCKYER: Four-zero. Thank you.

11 SENATOR BEVERLY: Leave the roll open.

12 CHAIRMAN LOCKYER: Sure.

13 Members, I want to check with you about schedule. I  
14 think we probably need to work through the lunch hour to get our  
15 work concluded, but I'm open on this. I don't want to  
16 inconvenience Members who wish to testify.

17 [Thereupon a discussion was held off the record]

18 CHAIRMAN LOCKYER: Okay, we have two members of the State  
19 Board of Forestry. I guess the next is Mr. Nelson.

20 Good morning, sir. Did you want to start with any  
21 comments at all?

22 MR. NELSON: Yes, yes, Mr. Chairman. I'll be brief.

23 Mr. Chairman and Members of the Committee, my name is Tom  
24 Nelson. I'm a registered professional forester in the State of  
25 California.

26 I have been, for the last four years, an industry  
27 representative on the nine-person Board of Forestry, and I'm  
28 before you today for possible reappointment confirmation.

1           Just briefly, a little bit about my background. I've  
2 seen many of you before in my capacity down here, working on some  
3 forestry reform legislation.

4           In 1991 and 1992, I was one of the principles in the  
5 Sierra Accord, which became a series of bills: two in the  
6 Assembly, two in the Senate. The Assembly bills were Mr. Hauser's  
7 and Mr. Sher's; the Senate bills were two folks that I learned  
8 this morning are now annuitants, Senator Keene and Senator  
9 McCorquodale.

10           Those bills passed but were vetoed by Governor Wilson, at  
11 which time I then became involved in the Grand Accord legislation,  
12 which was a set of bills sponsored by the Governor. A similar  
13 thing, industry and environmental coalitions to try and resolve  
14 some of the ongoing problems. That effort didn't fare very well  
15 in the Legislature either.

16           During that period, I was appointed to the Board of  
17 Forestry. As I said, it's a nine-person board, which you know  
18 three of which are members of the forest products industry, of  
19 which I am one.

20           Some of the things that we have accomplished in my first  
21 term there that I'm particularly proud of were the regulations  
22 that we passed for mandatory sustained yield, which would disclose  
23 and show that the private timber land owners who are harvesting  
24 timber in this state are not harvesting in excess of their growth.

25           And secondly, we instigated rules to allow analysis of  
26 the effects of this over a broader area, two areas, where one is  
27 sustained yield plans which look at the growth and harvests of an  
28 individual owner over a 100-year timeframe. The second was a



1 procedure to put into place local type rules, if you will, within  
2 sensitive watersheds, was the classification; where it could be  
3 shown that if the standard rules did not work, other rules were  
4 necessary, and those would, in fact, be in place for smaller  
5 portions.

6 Also, along with that, I've been involved, and  
7 supportive, and have voted for various attempts to try and  
8 streamline some of our regulations, particularly for the smaller  
9 land owners who are, in my opinion, overburdened by the process at  
10 this time.

11 And I also voted in support of the special rules we  
12 recently passed for the Lake Tahoe Basin, to try to expedite the  
13 rehabilitation of the drought-induced mortality up there.

14 The third -- or, the second point I'd really like to  
15 mention, as far as where we need to be going, my opinion and  
16 goals, should I be appointed for another term, I think like the  
17 other folks who are up here, and you're probably hearing it daily  
18 down here now, our Board needs to figure out ways to either  
19 maintain and possibly even improve the level of service in these  
20 times of shrinking budgets -- a tough task, as I'm sure you all  
21 know, but I think that's where we need to be headed.

22 Some of the areas that I favor and would like to work on  
23 are -- really two areas. One is to set up some sort of process  
24 where we can triage, if you will, the harvest plans as they come  
25 in.

26 As the agencies review these, there are a lot of harvest  
27 plans that come in each year, in the thousands. They all do not  
28 deal with harvesting old growth Redwood on the Coast. There are a

1 lot of them that are -- I won't use the word "benign", but they  
2 probably don't need the same sort of scrutiny that the more  
3 controversial plans do.

4 Yet, our process is so rigid that every single THP in the  
5 harvest plan that comes in must have a set amount of review, and  
6 it takes a lot of time. It takes a lot of office time.

7 And if we can figure out some way to, as I said, assess  
8 the risks and put more emphasis on the truly controversial plans,  
9 I think that's one area we may be able to save some time and money  
10 in these shrinking budget periods.

11 And the second area is, right now the largest emphasis is  
12 on office review and planning. And I think we need to take a real  
13 hard look at that and see if there isn't a way that we can move  
14 the on-the-ground inspection to a higher priority. We have a lot  
15 of resource professionals, licensed foresters such as myself, and  
16 a lot of other land management experts. We're spending far too  
17 much time in front of a computer and not enough time out in the  
18 woods. And so, one of my personal goals is to see if we can't  
19 reverse that somehow.

20 But at the same time, obviously, we need not to sacrifice  
21 the protections for the environment nor the protections of the  
22 private property rights of the landowners. That's easily said,  
23 and it's very controversial, as you probably understand.

24 The last thing I want to bring up is that as an industry  
25 member, in my previous position, before I accepted the  
26 appointment, I had a verbal agreement that I made then and I would  
27 make again with my two bosses, if you will, the man who appointed  
28 me, Governor Wilson, and my boss, Mr. Emerson who owns the company

1 I work for.

2 That agreement is that as a member of this Board, I have  
3 had in the past, and I would continue, to vote my conscience. And  
4 at times, and this is the understanding, that may be contrary to  
5 not only the owner of my company in Redding, but also to the  
6 Governor.

7 Both those entities understand that, and they've agreed  
8 to that. And I would make sure that it was a second condition for  
9 my reconfirmation.

10 With that, I'm here to answer any questions you have.

11 CHAIRMAN LOCKYER: Well, maybe it would be appropriate  
12 just to ask for testimony of any sort, and Members can hold our  
13 questions for the time being.

14 So let me ask first if there are people present who wish  
15 to comment in support of the appointment? Or, people present who  
16 wish to make any comments in opposition or express reservations,  
17 why don't you come on up to the front.

18 MR. NELSON: Do you want me to move back?

19 CHAIRMAN LOCKYER: Either way, sir. Whichever you wish.  
20 You may want to respond to some points.

21 Do you have some order that you're contemplating?

22 MS. HENRY: Actually, we can all talk.

23 My name is Liz Henry. I am the Chairman of the Board of  
24 Supervisors, Mendocino County.

25 I have with me two other Supervisors. We are not  
26 speaking as a majority of the Board on this issue, because we have  
27 not voted. We're speaking as individuals.

28 I'd like to have the Supervisors speak next, and then we



1 have a number of public from Mendocino County.

2 CHAIRMAN LOCKYER: Okay.

3 MS. HENRY: And other areas.

4 First of all, Mr. Chairman and Members of the Committee,  
5 I'm really pleased to be here in this hearing. It gives us an  
6 opportunity to come and to speak, and I hope you really will take  
7 this reappointment seriously. It's a very serious matter to us  
8 that you will review the qualifications of Mr. Nelson, ask some  
9 hard questions, and hear the public input.

10 Again, Mr. Nelson and I know each other from a hearing  
11 process. I have no feelings personally. This is really a  
12 professional thing I feel that I do have to do, especially as a  
13 member that's elected from the public.

14 Frankly, and I have to say this, I actually feel that,  
15 and I wish, the hearing were on the very existence of the Board of  
16 Forestry as it is presently constructed. We only have to look at  
17 the depletion in Mendocino County to see that the Board of  
18 Forestry has not protected Mendocino County and other counties  
19 from severe depletion.

20 In fact, the rigid process that Mr. Nelson alludes to  
21 when he talks about regulation has not helped but has hindered  
22 forest health in Mendocino County, and that should be noted.

23 I think the question, and I hope the question that you  
24 will be asking each appointee is to state very clearly whether  
25 they understand the content of the Forest Practice Act, and  
26 whether they support consistently the intent of the Forest  
27 Practice Act. This is the law that should be guiding the actions  
28 of the Board of Forestry, and in practice it does not.

1           Let me first say that I have the dubious fortune of  
2   having served in that purgatory that was mentioned, and that is  
3   local government at, I think, one of the worse times imaginable.  
4   I took office in 1989, just as demise was beginning for  
5   California. The tarnish was starting to appear on the Golden  
6   State, and certainly in Mendocino County we faced many  
7   difficulties.

8           We have faced and recovered from a five million dollar  
9   deficit. At this level, that sounds like peanuts. For Mendocino  
10   County, which has a budget \$100 million, it's a substantial  
11   amount.

12          We've also faced substantial groundwater contamination, a  
13   major land fill, as well as other severe problems and setbacks,  
14   and having to furlough employees to make our budget.

15          But nothing I have faced in Mendocino County has left me  
16   as disheartened and with a sense of defeat and cynicism that I  
17   felt on December 5th, 1994, when the Board of Forestry rejected  
18   Mendocino County's attempt to get approval for local rules.

19          This was after a one year time, all of 1994, appearing  
20   regularly, both myself, other supervisors, staff people, in front  
21   of the Board, and to explain to them, to get them acquainted with  
22   our needs. We brought them to the county. It was a substantial  
23   effort that was put in by the local government and by the citizens  
24   of Mendocino County to convince the Board of Forestry that  
25   problems did exist.

26          Mr. Nelson was part of the Board that we faced. We felt  
27   we were in our proper role, because the Forest Practice Act  
28   clearly states that there is a place for requests for special

1 needs for localities that feel they need them. And I believe the  
2 Forest Practice Act states that the Board of Forestry shall  
3 approve requested special local rules that are proven to be  
4 consistent with the Forest Practice Act and are needed to correct  
5 and meet those special needs in a local area that's requesting the  
6 rules.

7           Though we presented an excellent case, we were told over  
8 and over that Mendocino County did an excellent job, including  
9 from -- Mr. Nelson from the podium several times complimented us  
10 and our staff -- there was an unwillingness of the Board members  
11 to buck the Governor when it came down to the vote.

12           And I appreciate what Mr. Nelson said, and he probably  
13 sincerely feels that he votes from his conscience. But he did  
14 not, I believe, do that on that day. And it was disheartening to  
15 have, at a little after 9:00 on that morning on December 5th, that  
16 the decision was to be made, to have the Assistant Secretary of  
17 Resources, Terry Gorton, come. She'd never been to one of the  
18 hearings where we had been, had never made testimony or discussed  
19 it in any way with us, but she came, and it was a clear message  
20 from the Governor: the Board should not support these rules and  
21 should let the proposed and existing -- the newly approved state  
22 rules move ahead.

23           We were very disappointed and disheartened. The Forest  
24 Practice Act sets the goal for California's timber lands of  
25 maximum sustained yield. Unfortunately, the Board of Forestry  
26 consistently ignores this direction and supports what I consider a  
27 really strong property rights view that each timber land owner  
28 should be able to define what that maximum sustained yield is.



1           In Mendocino County, that means that depleted properties,  
2 such as those of L.P., some of which are way below five thousand  
3 board feet per acre, and let me compare that to Jackson  
4 demonstration forest, which has an inventory of well over forty  
5 thousand board feet per acre, so there's the contrast. But  
6 under -- we feel that under the current rules and the way that  
7 they were interpreted, the depleted land could also be producing  
8 something that's considered to fit under the maximum sustained  
9 yield definition, whether it was chips.

10           We really strongly, coming from the Redwood region which  
11 at one time produced a product that was regarded so well  
12 throughout the world, and now is losing some of that regard  
13 because of practices, we really feel that this does not -- this  
14 kind of interpretation by the Board of Forestry is not helpful to  
15 Mendocino County or to the state.

16           I heard Mr. Nelson several times at the hearings state  
17 that he would never support any regulations that would lessen the  
18 private property owner's control of when, how, and how much he  
19 wants to harvest.

20           He speaks of the SYPs, and that somehow they are going to  
21 rescue counties like Mendocino County. CDF has acknowledged that  
22 the first SYP presented by L.P. allows -- is not sustained yield,  
23 it's sustained depletion. It is allowing the practice to  
24 continue.

25           So, I believe that when you allow a land owner to ignore  
26 the public trust, the trust that we have placed in them preserving  
27 our resources for the future, you have to regulate that, because  
28 they, on their own, do not always make the right decisions.

1 I think the Board of Forestry as a whole has difficulty  
2 accepting that the Forest Practice Act does provide for the  
3 regulation of how much could be harvested, not only how and what  
4 those prescriptive practices are.

5 I also had a problem, Mr. Nelson did not attend a very  
6 important public hearing that was held in Ukiah. It took all day.  
7 There were many, many people on both sides that spoke. And I do  
8 believe the public process is a very, very important part of what  
9 the Board of Forestry does.

10 Just generally, industry has been able to sway the Board  
11 of Forestry because of their technical knowledge of forestry,  
12 which other members often don't have, but should have. This needs  
13 to be balanced on the Board with none industrial appointments with  
14 background in forestry.

15 The industry, and this is not particularly Mr. Nelson's  
16 fault, is given access that the public is not given access to. I  
17 was very rudely prevented, on December 5th, from approaching the  
18 podium by a bailiff who knew who I was, and then, right after me,  
19 just waved Mr. Bobby Simpson from L.P. right through, you know,  
20 after practically wanting to frisk me.

21 It's that kind of sense the public feels in front of the  
22 Board of Forestry. If you're the public, if you're a local  
23 elected official, you don't count. If you're industry, we'll talk  
24 to you behind the scene, we'll call you.

25 But we were very strongly instructed not to approach any  
26 of the members of the Board, and they were told that they should  
27 not talk with us. Yet we know, and we have documentation, that  
28 there were discussions happening all the time between industry and

1 the Board that we were not privy to.

2 So, you have to understand why I have this very strong  
3 sense of both dismay and cynicism anymore. I tell you, it took  
4 the heart out of me as far as a local official. I will be  
5 retiring at the end of this year, after eight years in local  
6 government. And as Colin Powell said, you have to have fire in  
7 the belly for these jobs, and my fire went out, especially on that  
8 day when I saw how we were treated after a year in front of the  
9 Board, making our case.

10 So, I would like to give opportunity for others. They  
11 will fill in the picture to you, but these were comments I feel I  
12 had to make. I got up at 5:00 o'clock this morning to get here  
13 and make them to you, and thank you for the opportunity.

14 SENATOR BEVERLY: Question by Senator Lewis.

15 SENATOR LEWIS: Supervisor, forgive me. I think we're  
16 kind of at a loss here because I'm not familiar with the Mendocino  
17 plan which you were trying to do.

18 Can you, maybe in a nutshell, give me an idea of what  
19 regulations you're referring to imposed on private land owners?

20 MS. HENRY: It was based around the two percent of  
21 inventory rule, which meant that there would be -- harvest would  
22 not exceed two percent of inventory every year, or 20 percent in  
23 ten years.

24 So, it was actually managing the amount of harvest.

25 SENATOR LEWIS: Two percent of private land?

26 MS. HENRY: Mr. Burkhardt, who will be speaking, was the  
27 author of that.

28 The rules were brought forward after long consideration



1 that started with the formation of the Forestry Advisory Committee  
2 in Mendocino County in 1989. So between 1989 and when they were  
3 presented to the Board in 1994, there were many meetings.

4 SENATOR LEWIS: Would you define for me what this two  
5 percent rule means.

6 MS. HENRY: That you would not harvest --

7 SENATOR LEWIS: A private land owner --

8 MS. HENRY: -- would not harvest --

9 SENATOR LEWIS: -- could only harvest two percent of his  
10 inventory in a given year.

11 MS. HENRY: Yes, to allow -- to allow for growth.

12 It's difficult to describe and talk about a very complex  
13 subject like forestry. You can have a lot of figures thrown at  
14 you, like, well, we're growing, you know, 10-15 percent. Why do  
15 you only want us to cut two percent.

16 Well, that's because young timber, young trees, very  
17 small trees, do have a very high growth rate. It could be  
18 described in double digits. It doesn't mean that you're looking  
19 at trees that should be harvested.

20 So, what we're encouraging is a longer rotation, and that  
21 trees -- actually that timber reaches that potential maximum  
22 sustained yield before it's harvested.

23 Mendocino County now is falling into -- from being a top  
24 producer as far as Redwood products, we are now recognized as, I  
25 think, going to be a leader in the chip industry. And for me as  
26 Supervisor, that is very discouraging, that our lands that can  
27 grow Redwood, can grow Doug fir, are now being used in what's  
28 called dumpster logging where you scrape up everything that's on

1 the ground, and run it through a chipper to be glued back together  
2 into boards.

3 SENATOR LEWIS: Can I ask Mr. Nelson, it was alleged in  
4 the Supervisor's testimony that you did not vote your conscience  
5 when it came to the Mendocino Plan.

6 Can I just ask you, did you vote your conscience or did  
7 you not?

8 MR. NELSON: I always vote my conscience, Senator, and I  
9 did in fact vote my conscience, and I was not influenced by anyone  
10 in the vote for Mendocino.

11 If I might also respond to a couple of things.  
12 Supervisor Henry is exactly correct. I have made numerous  
13 statements that private land owners should be allowed to harvest  
14 and decide what products they are going to produce on their land.

15 But I have also always qualified that with first, and  
16 this is what the rules that the state, and which are statewide,  
17 provide for. First they must prove that they've protected the  
18 public trust resources of the state, the water, the air, to some  
19 extent the wildlife, the soil productivity. Those must be  
20 disclosed as to how those would be protected.

21 Secondly, and this comes with the new regulations that  
22 came on the heels of the failed legislation, they must show it is  
23 sustainable over time. Once you have shown both those things, I  
24 believe that the private land owner must have the flexibility,  
25 having shown those things, to produce the products he or she so  
26 chooses.

27 My real argument with Mendocino County -- there's no  
28 doubt in my mind that their proposal would have done what they

1 wanted, but in my opinion they had crossed over the line, because  
2 additionally, beyond protecting the public trust resources and  
3 showing sustainability, they also wanted to limit, and in effect,  
4 tell the land owner which products they would be producing. I,  
5 frankly, cannot go along with that.

6 I think that I made it fairly clear early on that I had a  
7 real problem with that approach.

8 SENATOR BEVERLY: Senator Petris.

9 SENATOR PETRIS: I was concerned about her comment that  
10 they didn't seem to be very welcomed in getting access because of  
11 their particular viewpoint.

12 Could you comment on that?

13 MR. NELSON: Well, I think it's unfortunate.

14 If I personally made you feel that way, I'm very sorry  
15 for it.

16 There have been a lot of points where we did not agree  
17 with the board, and that's going to become obvious here, I'm  
18 sure.

19 I felt, myself personally anyway, I've done an admirable  
20 job of telling them that there were differences, but trying to  
21 remain civil about it, and trying to show them the respect they  
22 deserve.

23 I live in a small county in Redding. I know a lot of  
24 County Supervisors. They have a tough job. I also have a lot of  
25 the rural feelings that, when you come up against a large state  
26 entity, it can be intimidating, and they can seem very cold. I  
27 understand those things, and I think it's unfortunate that that  
28 happened.



1 I personally don't think that I am at fault.

2 MS. HENRY: May I make a comment?.

3 SENATOR BEVERLY: Let's keep it brief, please.

4 MS. HENRY: I would agree that Mr. Nelson was never rude  
5 to us personally.

6 I wants to explain that I think also the role of the  
7 Executive Director at the Board of Forestry, Mr. Cromwell, has a  
8 lot to do with how things happen.

9 As you know, as you're elected or appointed, you may come  
10 and go with the will of the people or who you're appointed by.

11 The roll of Executive Director remains there, and that  
12 person holds all the information, has access, and knows all the  
13 ins and outs within the workings of Sacramento and elsewhere.

14 And we have an Executive Director at the helm who's been  
15 there for 18 years, and who -- I hope some of the others will  
16 backup some of the comments -- was the leader in keeping us from  
17 having access to information. At one point, published information  
18 that was not correct, which was circulated through the regular  
19 channels of CDF, which was never retracted in a manner that gave  
20 people notice that there were changes. This had substantial  
21 impact on the case we were making.

22 So, we felt many times that we were impeded. Letters  
23 were not presented that we should have had and had been able to  
24 answer to until the day of hearing. There were many, many ways  
25 that we felt. You don't have time to hear them.

26 But I do believe for a board to be effective, they also  
27 need to be working with the staff, who also hold in great esteem  
28 the public and dealing with the public. And I don't feel that Mr.

1 Cromwell did that in his treatment of Mendocino County.

2 I know he's not up for appointment.

3 SENATOR BEVERLY: Senator Ayala.

4 SENATOR AYALA: I had the opportunity to visit with both  
5 Mr. Nelson and Mr. Rogers. I was under the impression, after a  
6 visit with them, that local governments have no role in  
7 introducing a plan of their own.

8 But now I have information that tells me that pursuant to  
9 the California Forest Practices Act, a county that does not  
10 believe that the over-all state rules address their particular  
11 needs can adopt separate rules to govern their timber land.

12 This is Public Resources Code Section 4516.5.

13 So, I don't understand. Your plan submitted by your  
14 board took a number of years --.

15 MS. HENRY: And it was developed by professional  
16 foresters.

17 SENATOR AYALA: And the problem was what? What were you  
18 trying to protect that the forestry didn't do?

19 MS. HENRY: The Forest Practices Act, as implemented by  
20 the Board of Forestry and regulated by CDF, did not protect  
21 Mendocino County from substantial depletion of its timber  
22 products. Its timber -- the growth rate, and other than for very  
23 young trees, has declined in actual standing timber.

24 We are, in a sense, a third world nation. It's a cut and  
25 run industry in Mendocino County. We felt that it needed to  
26 stop. There needed to be a period when there was no longer  
27 depletion and there was actual addition to the inventory.

28 That is what we attempted to portray in a resolution

1 passed by the Board of Supervisors, and that is what we attempted  
2 to show.

3 SENATOR AYALA: I hope somebody can tell me what that  
4 means. Does that mean a County Board of Supervisors can overrule  
5 the state board?

6 MS. HENRY: No. I think the language says that the state  
7 board shall approve special rules or local rules -- I don't know  
8 exactly how that's stated -- when a local area requests if they  
9 are consistent with the Forest Practice Act and if they show and  
10 prove the need.

11 And we believe we showed both elements.

12 SENATOR AYALA: The paper I have, it says that pursuant  
13 to California forest practices, a county that does not believe  
14 that the over-all state rules address particular needs can adopt  
15 separate rules to govern its timber lands.

16 It seems to me like you have the authority to overrule?

17 MS. HENRY: We have to go to the Board of Forestry. They  
18 form the regulations.

19 SENATOR AYALA: You're saying that when you presented  
20 your plan, that these folks ignore the whole thing.

21 MS. HENRY: Basically, many of them.

22 SENATOR AYALA: They pay attention to your request?

23 MS. HENRY: We got three votes. The presence on the  
24 Board of Forestry of Bob Heald, who is a forester and manages the  
25 Blodgett Forest for the University of California at Berkeley, his  
26 knowledge of forestry, I think, helped guide a number of the  
27 members. And I have to say, Mr. Rogers also listened and was  
28 brought along, you know, with understanding what Mendocino County



1 was trying to do and was supportive.

2 SENATOR AYALA: This says that in 1990, in Mendocino, at  
3 the behest of the Board of Forestry, they decided to draft special  
4 rules because of the unique problems they faced regarding the  
5 impact of clear cutting on coastal streams and fisheries.

6 I'm still not clear whether, if the Board ruled a certain  
7 way, the State Board, that the county can overrule if they've got  
8 a special problem?

9 MS. HENRY: You can't overrule. You can request special  
10 rules.

11 SENATOR AYALA: But they don't have to be approved.

12 SENATOR BEVERLY: Let's have Mr. Nelson comment on that.

13 MR. NELSON: I might be be able to help you with that.

14 You've got it write-up to that point. The county can  
15 request of the State Board, who has the over-all authority,  
16 special rules.

17 The Board, then, has to look at the conditions for  
18 approving those rules, the two conditions, and Liz had one of them  
19 almost verbatim, are that you have to show -- the county must show  
20 the necessity for rules, the need for the rules.

21 Secondly, the Board must be convinced that the rules will  
22 meet the intent of the Forest Practices Act. That really is where  
23 the issue lies.

24 I did not support the county package because I did not  
25 feel that they met the intent of the Forest Practices Act.  
26 Therefore, I voted no.

27 SENATOR AYALA: Both you and Mr. Rogers supported the  
28 concept submitted by the Board.

1           The Board has a right to turn you down, otherwise every  
2 county would have their own plan.

3           MS. HENRY: Certainly.

4           SENATOR AYALA: It would be difficult to implement.

5           MS. HENRY: But we believed -- we believed then and we  
6 believe now, that findings need to be made. I'm not sure --

7           SENATOR AYALA: Your problem is that home rule was not  
8 addressed. That you came in there and you were not --

9           MS. HENRY: Home rule does not.

10          SENATOR AYALA: I'm a strong supporter of home rule.  
11 That's where I'm coming from.

12          My point is, you're telling us that when you appeared  
13 before the Board, they were not very sympathetic; they ignored  
14 your request and just didn't think too much of your plan, or  
15 whatever.

16          MS. HENRY: They certainly heard it. We went through a  
17 whole year of hearings, a tremendous amount of testimony. We were  
18 encouraged at times because there seemed to be an understanding.  
19 There were visits to Mendocino county. I don't believe Mr. Nelson  
20 was there on that visit, and there were comments made often that  
21 yes, they understood the need. They could see in need on the  
22 ground in Mendocino County. But they just were not going to  
23 support.

24          SENATOR AYALA: I want to pinpoint the problem.

25          You're telling us that you appeared before this Board  
26 with your own plan, and they turned it down. They had a right to  
27 turn it down, did they not?

28          MS. HENRY: I believe so. It depends how you interpret

1 it. It says the Board shall, if they find it's not consistent and  
2 there's no need.

3 It's my belief that the Board of Forestry did not make  
4 those findings. If they did, it's not in the record. There were  
5 very few comments made by most of the Board members about their  
6 vote.

7 SENATOR AYALA: Reading from this again, this is what  
8 confuses me. It says that if the county does not believe that the  
9 over-all state rules address particular needs, they can adopt  
10 their own separate rules to govern their timber lands.

11 To me, it tells me they can overrule the  
12 Board.

13 MS. HENRY: No, this is unfortunate.

14 At one point counties could, and there were county rules  
15 established. I don't know what year. The system has changed.

16 SENATOR AYALA: Every county can have their own rules as  
17 they go along? They have certain findings to make it stick.

18 MS. HENRY: If approved by the Board of Forestry. Santa  
19 Cruz has county rules. Those were established --

20 SENATOR AYALA: It says here that they can do it without  
21 approval of the Board.

22 MS. HENRY: We wish we could.

23 SENATOR BEVERLY: Let's here from further witnesses.  
24 They might shed more light on it.

25 Next witness, please.

26 MR. PETERSON: Good afternoon. My name is Charles  
27 Peterson. I'm the 5th District representative and the vice chair  
28 of the Mendocino County Board of Supervisors.



1           The process about how all this comes about is long and  
2 complex. What I know is that I was Supervisor-elect on the day of  
3 the hearings. I'd been through the election; I'd been elected to  
4 an open seat in the 5th District.

5           I had been involved in the process of attempting to  
6 improve forest practices in Mendocino County for the prior twenty  
7 years. In fact, forestry issues were the underlying issue in the  
8 campaign that got me elected, and these rules and my support for  
9 them was the underlying basis relative to the forestry issue.

10          I watched the process go on in Mendocino County go on for  
11 years, where representatives of the California Department of  
12 Forestry, of other state agencies, of county agencies, of  
13 environmental groups, of the timber corporations who were major  
14 property owners in Mendocino County, sitting at the table, going  
15 through the intensely difficult process of coming to all the  
16 compromises and deciding upon a plan.

17          I would also like to point out that Mendocino County went  
18 through this process, and it was a very difficult one for  
19 everyone.

20          Based upon the fact that there was recognition at the  
21 state as well as the local level that severe depletion of  
22 resources had occurred in Mendocino County, I'm talking about an  
23 economic issue that in ten years changed our employment in timber,  
24 directly in timber, by cutting it by almost two-thirds. In  
25 Mendocino County that means from approximately 3,000 jobs to 1300  
26 jobs.

27          You have to understand that in a county of less than with  
28 100,000 people, this has been a major and intense impact.

1           What this Board of Supervisors has been attempting to do  
2 for years is to establish a system of forestry regulation in  
3 Mendocino County that will ensure the long-term viability and  
4 economy of the communities and the companies that are involved and  
5 a stable basis of employment for people who live there.

6           After four years of going through this process, and  
7 appearing before Board of Forestry, and basically with recognition  
8 from the Board of Forestry that we had a depletion problem, and  
9 with encouragement from the Board of Forestry to go through this  
10 process, we came back not with a complaint, but with a solution.

11           What I found to be one of the most appalling things that I  
12 have ever seen in a public meeting, it was as though the prior  
13 four years had never existed, had evaporated in a puff of smoke  
14 with a few noes. No one on the Board, including Mr. Nelson, as  
15 far as I'm concerned, but most of the board would not even bother  
16 to pay lip service as to what the reasons were for saying no,  
17 except we don't think it will work.

18           What were those prior four years about? What were all  
19 those foresters sitting at table, and the companies, and everybody  
20 else all about.

21           I feel that we were treated grotesquely unfairly. I  
22 understand that fairness is one thing. I understand that as a  
23 member of Board of Supervisors, when I go in there, quite often my  
24 mind is made up. I'm informed on issues. I want to listen to the  
25 public testimony to see how it might change my attitude, or change  
26 in some way to wording of the vote. I understand that.

27           But I also understand that appearance in public office is  
28 everything. What we had here was a complete lack of even an

1 appearance of fairness. That's what I'm here about.

2 And I think that throughout the State of California,  
3 there are probably innumerable people who can represent the timber  
4 industry who understand that at least the appearance of fairness  
5 is important.

6 And I think that irrespective of your individual  
7 positions upon natural resource issues or environmental issues, or  
8 economic issues, that it is possible for the Governor to bring  
9 somebody before you who at least understands that.

10 That's why I'm here. That is why I'm opposing the  
11 reappointment of Mr. Nelson not Board.

12 SENATOR BEVERLY: Thank you very much.

13 Any questions? Senator Lewis.

14 SENATOR LEWIS: Can you give me an idea of what  
15 percentage of the forest land in Mendocino County is privately  
16 owned?

17 MR. PETERSON: Well, the two largest timber owners,  
18 Georgia Pacific and Louisiana Pacific, own just under half a  
19 million acres. I'm not sure you know the breakdown between  
20 government and privately, but a major portion of the prime forest  
21 land in Mendocino County is owned privately.

22 SENATOR LEWIS: More than half?

23 MR. PETERSON: I'm going to defer. There are other people  
24 here who are going to speak who actually know those numbers.

25 I admit that as an elected official, I depend very much  
26 on staff and those experts that I rely on for information.

27 SENATOR LEWIS: One other question about your testimony  
28 with regards to, you say the employment in timber-related jobs



1 right now is 1300?

2 MR. PETERSON: That was the figure approximately a year  
3 ago now.

4 SENATOR LEWIS: If the two percent limitation rule had  
5 been adopted, is it your contention that employment would have  
6 risen?

7 MR. PETERSON: Over time it would have risen constantly.  
8 Yes, that's my contention.

9 I feel that there was a possibility that in the very  
10 short-term that we could have actually lost further jobs. That is  
11 a potential, but I'm absolutely certain that with the two percent  
12 rule, that from that point forward there will be nothing but a  
13 building of inventory, a building of the annual cut, the amount  
14 that was cut, and a building of the jobs and the economic resource  
15 in Mendocino County.

16 There was another question you asked earlier about the  
17 two percent.

18 SENATOR LEWIS: Just a question on that two percent. If I  
19 understood the previous Supervisor who said the growth was at ten  
20 percent a year, and if you're limiting the cutting at two percent  
21 per year, it seems that you're not maximizing the potential for  
22 harvesting, and therefore --

23 MR. PETERSON: A tree that is one year old grows at 200  
24 percent and produces nothing you can cut. A tree, a Redwood tree  
25 at 120 years old is growing at one percent, and is adding the most  
26 amount of board feet per acre that it ever does in its life.

27 So percent of what, is the question. So, the percent by  
28 itself means nothing, but a percent of the forest that you're

1 talking about means everything.

2 In other words, a forest -- if you are cutting a forest  
3 at an average of 40 years, and you're cutting, let's say, four or  
4 five percent of that, with the amount of volume you have on that  
5 acreage, it's less than if you're cutting a forest that has an  
6 average age of 100 years and you're cutting two percent. You're  
7 actually cutting more wood.

8 Also relative to the rule, it was two percent per year,  
9 but that's 20 percent in a decade of your current inventory at the  
10 time of the numbers you're talking about. That means cutting 100  
11 percent of your current inventory in 50 years, which quite  
12 honestly, is far less than maximum sustained yield.

13 So, the question is not the percent. The question is,  
14 how many board feet per acre per year are you producing on the  
15 land?

16 SENATOR LEWIS: I think your math was wrong. If it was  
17 100 percent over 50 years, there wouldn't be anything left.

18 MR. PETERSON: Well, obviously, the forest continues to  
19 grow.

20 SENATOR BEVERLY: Let's hear from the next witness.  
21 You'll have an opportunity to respond, Mr. Nelson.

22 MS. BAILEY: My name is Linda Bailey. I was a member of  
23 -- I've been member all for forestry committees that the Board of  
24 Supervisors in Mendocino County has set up for the last decade.

25 I was a member of the Forest Advisory Committee, and I  
26 also had the privilege of serving the Board of Supervisors as  
27 staff in presenting their proposal to the Board of Forestry.

28 I would also like to add, on personal note, that I do

1 come from a logging family, so that I'm not a tree hugger or one  
2 that's opposed to productive use of the forest.

3 That experience with the Board of Forestry made me very  
4 cynical about state government in general, and the Board of  
5 Forestry in particular.

6 Prior to this time I, naively perhaps, actually had faith  
7 that the democratic process worked. I have had no further  
8 dealings with the Board of Forestry since January of '95 because I  
9 am deeply convinced it's a profound waste of time to submit  
10 comments or to testify at any of their proposals [sic] and I will  
11 not participate in the charade that public input is considered, or  
12 that the public interest is safeguarded in any of its proceedings  
13 or deliberations.

14 A lot of this is just based on the way they handle their  
15 affairs. It is substance neutral.

16 The reason that Mendocino County was there was because  
17 they were exercising their statutory right to request special  
18 rules. Those rules, by virtue of government principles, have to  
19 be stricter than what the Board of Forestry has. So, we have to  
20 come in and ask for strict rules to address a local condition.

21 My conclusion, after dealing with that Board, is that as  
22 it's currently configured, it's absolutely contemptuous of local  
23 government, it's contemptuous of the public, it's contemptuous of  
24 the public interest and the law, and by implication, of you who  
25 make the laws.

26 I looked for a copy of my Forest Practice Act before I  
27 came up here so that I could give you an exact quote of the intent  
28 of the Forest Practice Act. I think I threw it away because I



1 deem it irrelevant to anything that's going on in forestry today.

2         The intent of the Forest Act, the whole reason that this  
3 Board exists is so that we can have maximum sustained production  
4 of high quality timber products. You cannot achieve that without  
5 putting some controls of the Rate of cut on private land owners.  
6 That is the policy of the State Legislature.

7         Because Mr. Nelson in his conscience does not agree with  
8 that, he certainly can hold that feeling. I mean, anybody can do  
9 what they want. But he should not sit on a Board that's charged  
10 with an aim which is diametrically opposed to what he believes.

11         I also find that the claim that private property owners  
12 should be able to determine their own product rings a little  
13 hollow when they've been receiving for decades tax subsidies for  
14 them to grow timber, and timber has a specific meaning, and it  
15 doesn't mean wood and chips.

16         For that reason alone, I don't believe that Tom Nelson  
17 should be on that Board of Forestry because he doesn't believe  
18 what it's there for. He doesn't believe in it.

19         I would like to just briefly run down through some of the  
20 events that happened to the County of Mendocino in the process of  
21 presenting this proposal to the Board of Forestry. And the Board  
22 Forestry actually helped us develop the proposal. They sent staff  
23 persons down; we developed these rules. They were analyzed by  
24 every single forestry expert that you can name across the state of  
25 California. They were analyzed and modeled by a team of experts  
26 that were acceptable alike to industry, environmentalists, and  
27 public members of the Forest Advisory Committee, and a team of  
28 computer experts from the University of California School of

1 Forestry.

2 This -- people said that it was probably the best rule  
3 package that the Board -- had ever come before the Board. And Mr.  
4 Nelson told you it would do what it was designed to do. What it  
5 was designed to do, Mr. Peterson has certainly told you very  
6 clearly.

7 I mean, our forests have been going down hill;  
8 unemployment has been going down hill. Mills have been going down  
9 hill.

10 We have in Mendocino County, half of the Redwood land in  
11 the whole state; half of it is in Mendocino County. It's the most  
12 productive timber land in the world.

13 And the Board of Forestry is just, you know, leading us  
14 in the direction where what they want to do is set up chipping  
15 plants now.

16 Okay, but anyway, back to what happened. First of all,  
17 the staff interpreted the deadline for action, contrary to the  
18 plain language of the statute, that it would occur after the  
19 gubernatorial election, not before.

20 A letter from the Board of Supervisors to the Board on  
21 this point went unanswered, so what were they supposed to do? Stop  
22 and run to the courts and litigate that before we'd even begun?

23 The first day we appeared before the Board, it was  
24 announced that the Board was walled off. That I, the staff of the  
25 Board of Supervisors, could not talk individually to any member of  
26 that Board of Forestry. That our conversations would be limited  
27 to what occurred within the Board meeting, open meetings.

28 I couldn't talk to them, the Supervisors couldn't talk to

1 them, and nobody from the general public could talk to them. This  
2 was a total subversion of the intent of the Open Meeting Act.  
3 This was not a quasi judicial thing; this was in the rule-making  
4 function. Open Meeting isn't supposed to wall you off from access  
5 to the people that are making your laws.

6 We had difficulty in getting materials in a timely  
7 Fashion. By the time we came to the final vote in December, cost  
8 had been made a major issue. I had written a letter requesting  
9 that the cost analysis that they had originally published be  
10 redone so that it was in accordance with the laws and regulations  
11 and based on reasonable facts. I specifically requested a  
12 response to my letter before the meeting was held, before the  
13 December meeting was held.

14 Imagine my surprise when I'm at the meeting and we're  
15 standing up, and they're reading the response to my letter. And  
16 they're entering it in the record, and I never even got it. And  
17 it was in the Board of Forestry office when they FAXed me other  
18 materials. The meeting was held on a Monday, and Friday afternoon  
19 at 4:00 o'clock, they FAXed me over the materials. Golly, that  
20 letter wasn't there, a crucial central issue.

21 No written response was ever made to our request, or to  
22 any of the comments of any of the public, and the comments were  
23 voluminous, and they were thoughtful, and they were from respected  
24 professionals, and they were from knowledgeable members of the  
25 public, and they were from ordinary citizens. No response was  
26 made to these.

27 No analysis either prior to or after the decision. This  
28 is contrary to CEQA's APA. Talking to that Board is like shouting



1 down a well. They just voted no and walked away. And apparently  
2 they do this all the time.

3 CHAIRMAN LOCKYER: Senator Ayala.

4 SENATOR AYALA: I think we have the whole Board on  
5 trial. We only have two members here.

6 Would you address these folks' performances, not the  
7 Board itself. There's nothing we can do about the Board, but we  
8 have two members here. I really would appreciate it if you would  
9 zero in on the two we have before us and go from there.

10 MS. BAILEY: Okay, my point is that this Board needs to  
11 be changed. And you've got to start. You've got two before you  
12 now, and I understand you've got two coming up, and I would like  
13 these records to be entered, these comments to be considered when  
14 you consider those subsequent ones.

15 In terms of Mr. Nelson, he's very proud of sustained  
16 yield practice, which is not sustained yield at all. It is -- our  
17 major land owner, who has 300,000 acres of timber land in  
18 Mendocino County, is going to further deplete their already badly  
19 depleted land under this. This isn't sustained yield.

20 He's proud of the sensitive watershed, that in fact is  
21 the most onerous procedure that you could possibly imagine to be  
22 followed through. It places an incredible burden on anybody from  
23 the area who wants to put a sensitive watershed in. I sat and  
24 listened to the Board deal with sensitive fisheries nomination by  
25 Fish and Game.

26 Fundamentally, I don't think Mr. Nelson should be on this  
27 Board because he is opposed to this law. I think that when you  
28 ask -- before you confirm anybody to this Board, I think that they

1 should meet three basic qualifications. One is, that they should  
2 believe in the law that they're put in charge of enforcing, and  
3 that they should agree to follow other state laws, meaning that  
4 the Board also -- I mean, I didn't hear Mr. Nelson object when the  
5 APA was violated by Board procedures. So therefore, he is party  
6 to it.

7 I mean, they published the 45 day notice that they're  
8 required to do under Administrative Procedures Act, which was  
9 based on totally bogus acts, hypothetical, that distorted and  
10 poisoned whole public debate. It was false.

11 Mr. Nelson sits there and lets that go on, so I have to  
12 assume that he agrees with it in some way.

13 So, I think they need to look at three things. And I  
14 think they need to subscribe to the intent of the law and agree to  
15 follow other state laws.

16 I think that they should be knowledgeable about forestry,  
17 and certainly in terms of Mr. Nelson's appointment, I mean, he is  
18 a knowledgeable in forestry, and if he fits the category. I think  
19 when you consider Mr. Rogers, you should see whether he is  
20 knowledgeable about forestry. And I think that they should truly  
21 fit the category.

22 And I think that the third thing that they should do is,  
23 I think that they should understand the rule of the executive  
24 branch. And that when they are to execute the law, it doesn't  
25 mean to kill it. It means to put it into effect.

26 CHAIRMAN LOCKYER: Are we referring to 4516.5 (a) is the  
27 exhibit that we have in our materials that talks about counties  
28 developing local plans. Is that what --

1 MS. BAILEY: There's that law, but then there's also the  
2 Administrative Procedures act.

3 CHAIRMAN LOCKYER: Is that the issue with respect to the  
4 local plan that we're talking about, that he disregarded the local  
5 recommendation?

6 MS. BAILEY: Yes, but it's also just -- I mean, aside  
7 from whether he voted yes or no on that, it's just also the way  
8 the Board proceeds. And the fact that he is opposed to this law.

9 CHAIRMAN LOCKYER: Opposed to what law.

10 MS. BAILEY: He's opposed to the intent of Forest  
11 Practices Act.

12 CHAIRMAN LOCKYER: I've not heard any evidence that he's  
13 opposed to the Forest Practices Act.

14 MS. BAILEY: He doesn't believe that land owners should  
15 be told what kind of product. Well, the Legislature -- the Forest  
16 Practices Act says high quality timber products.

17 CHAIRMAN LOCKYER: Okay, perhaps, sir, you could comment  
18 on that.

19 MR. NELSON: I really would. I had several, but I'll wait  
20 in the interests of time.

21 That particular point, I think, is the central part of  
22 the issue.

23 I do in fact believe in the Forest Practices Act which I  
24 believe she's referring to, the Z'Berg-Negedly Act. That has  
25 probably been the subject of most of the controversy you've heard  
26 about hear.

27 It says maximum sustained production of high quality  
28 timber products, but it does not define that. I work, when I'm



1 not on the Board, for the forest products industry. I think I  
2 know, at least in my mind, what a forest product is. This desk  
3 and this chair are timber products. A big tree is not a timber  
4 product, in my opinion.

5 I believe that the County feels that a large tree is a  
6 timber product, and there's a fundamental difference there.

7 So, in fact, the reason that I did vote no against the  
8 rules was because I did not believe that their rules met the  
9 intent of the Forest Practice Act, which is an act which I really  
10 do believe in.

11 There's also a second part of the Forest Practice Act,  
12 and this is where you get into Senator Lewis's question about the  
13 percent of inventory.

14 It is my belief that I stated early on through the  
15 process with the County Supervisors that the private land owners  
16 have an obligation to protect the public trust resources. The  
17 statewide rules which we passed also included that you must show  
18 that it is sustainable. That is an obligation I believe is placed  
19 on every private land owner of forest land in the state.

20 The County rules went past that to regulated the proposed  
21 regulations for the amount of their inventory that they would be  
22 allowed to harvest. Loosely translated, that's where they went to  
23 what products you're going to produce. In effect, that's what it  
24 does.

25 My problem is, and I think that it's also --

26 CHAIRMAN LOCKYER: Aren't they the same?

27 MR. NELSON: No, they're not.

28 CHAIRMAN LOCKYER: If you're obligated to have a

1 sustainable yield, don't you then have to have some plan that  
2 tells you what you can harvest and how much in order to sustain  
3 the yield?

4 MR. NELSON: The statewide rules provide for that. The  
5 problem is that when you set an arbitrary rate, such as two  
6 percent, what do you do with the private land owner, who's been  
7 encouraged to keep that land in forest land, who's made  
8 investments on it, and who is now growing his trees, his or her  
9 trees, at a rate of four or five percent.

10 They've made investments, and they have done what the  
11 state has asked them, which is to keep it in forest land and not  
12 develop it. Now you're telling them, well, that's great, but  
13 you're growing it at a higher rate, but we're only going to allow  
14 you to cut it at two percent.

15 That's where they lost me.

16 CHAIRMAN LOCKYER: This two percent rule was what you  
17 were objecting to?

18 MR. NELSON: Yeah, and I think it's also -- during the  
19 course of all this public debate, there's kind of a misleading  
20 premise here that there was this giant consensus in Mendocino  
21 County. I did not see that giant concensus. Notably absent in  
22 any of this language that came out of the committee was any strong  
23 supports from the people who owned the land in that county, small  
24 land owners and the large land owners.

25 I think it's for the very reason that I just mentioned to  
26 you: they felt that they were being punished by not being  
27 allowed to harvest up to the level they were growing.

28 Except the fact that they should not be harvesting beyond

1 that, and in fact, some of the implications that that had happened  
2 in the past, we felt we fixed with the statewide rules.

3 But certainly, if you're encouraging them for prudent  
4 stewardship to keep that land as forest land and to grow trees,  
5 why should they be punished by only being allowed to harvest at a  
6 lesser rate than what they're growing? Up to that rate was what I  
7 was in favor of, and that was not allowed to go through.

8 MS. BAILEY: One brief comment.

9 The gravity of my complaint against Mr. Nelson is not  
10 that he didn't adopt our County rules. It's the way in which the  
11 Board which he is a member of, conducts its business, which is in  
12 violation of law.

13 And I -- it -- while I was there, I also saw them vote on  
14 another matter in which they were advised that what they were  
15 voting on was in violation of three separate state laws. They  
16 were so advised by two separate state agencies, and I believe it  
17 was a unanimous vote.

18 CHAIRMAN LOCKYER: What I'm hoping we'll be able to do is  
19 to conclude with the Mendocino issue specifically. I want to make  
20 sure everyone has a chance to comment on both sides, but so that  
21 we're not just repetitive in going back to that again and again.

22 Then, if there are any other issues that are relevant, or  
23 other testimony that would be sort of a different topic or  
24 something, to make sure that gets on the record.

25 Yes, sir.

26 MR. SUGAWARA: First of all, I want to thank you for  
27 holding this hearing.

28 My name is Seiji Sugawara. I'm the 1st District



1 Supervisor in Mendocino County. I've become familiar with Mr.  
2 Nelson, and Mr. Rogers, and the Board of Forestry through the same  
3 process of trying to get local rules adopted.

4 You know, I'm not a cynical person by nature. But I have  
5 to say that the process made it difficult to retain that posture.

6 I think the issue of the uneven playing fields in terms  
7 of access was very discouraging. I think having Ms. Terry Gorton  
8 coming down before the vote to actually give instructions was  
9 totally embarrassing to me.

10 In the interests of time, I'm going to make comments  
11 specifically about Mr. Nelson, and also Mr. Rogers so that I don't  
12 have to testify twice.

13 CHAIRMAN LOCKYER: Okay, sir.

14 MR. SUGAWARA: Both men were courteous. I felt that in  
15 the case of Mr. Rogers, he listened. He was out there to listen  
16 to the public in Ukiah. He was on the ground to look at the  
17 depleted forest. Mr. Nelson was not.

18 I believe that there were a number of members on the  
19 Board of Forestry who at least recognized that the problem was  
20 real, that it needed to be addressed, and made sincere efforts to  
21 do so, even if they did not agree with the particular solution  
22 that we had proposed. And I think Mr. Rogers was among them.

23 But my sense of Mr. Nelson's position was that, you know,  
24 it would be all right if all of the timber land owners decided to  
25 convert their land to producing commodity fiber in the form of  
26 young trees; that was perfectly fine.

27 Well, to suggest that you can have that kind of business  
28 and not have severe impact on the public trust values, I think --

1 and I'm no expert, but I don't think it takes a genius to  
2 recognize that you can't have just young trees being cut in 20  
3 year rotations and expect that you're going to have the same kind  
4 of public trust values maintained as provided by a whole mixed age  
5 forest.

6 And, you know, there's also economic impact. We have a  
7 region that grows half the Redwood in the world. If it's not a  
8 commodity, it's a specialty crop. Our Douglas fir is a specialty  
9 crop.

10 When you reduce it to producing commodity fibers, the  
11 economic impact on the County in general, as well as County  
12 government, who relies on income from timber yield tax, is  
13 impacted very severely because commodity fiber has very little  
14 value at the mills and results in very little income to the County  
15 government.

16 Personally, and I'm not speaking for anyone else but  
17 myself, I feel that while Mr. Rogers did not share our vision in  
18 terms of our specific solution to the problem, I feel that he  
19 demonstrated every effort to come up with alternatives, and to at  
20 least try to deal with the problem of depletion of our resources.

21 I did not have the same feeling regarding Mr. Nelson.  
22 And, you know, I have real problems with this notion of being  
23 industry representative, whether we're talking about the Board of  
24 Forestry or anything else. We should have public representatives  
25 who happen to be from that industry.

26 I don't see that on this Board, and I don't see that on  
27 other state boards, I might mention.

28 CHAIRMAN LOCKYER: Sir, do you distinguish between Mr.

1 Nelson and Mr. Rogers anyway in terms of philosophy, access to  
2 local opinion? Are they essentially indistinguishable, or are  
3 there differences that you would want us to know?

4 MR. SUGAWARA: I think there is -- I'm not sure. You  
5 know, I don't know them well.

6 CHAIRMAN LOCKYER: No, I mean just from your observation?

7 MR. SUGAWARA: My observation was that Mr. Rogers  
8 wrestled with the problem. That there was some effort to come up  
9 with alternatives.

10 I think Mr. Nelson, as he has expressed, feels that if  
11 the land owners want to grow commodity items, that's okay. That's  
12 their business.

13 I suggest that there's a public trust interest involved  
14 and a responsibility to make a valuable resource as productive as  
15 it is can be.

16 SENATOR LEWIS: Question.

17 CHAIRMAN LOCKYER: Senator Lewis.

18 SENATOR LEWIS: Follow-up question to Senator Lockyer's  
19 question in terms of your distinguishing between the two  
20 appointees.

21 Do you support the confirmation of Mr. Rogers?

22 MR. SUGAWARA: I personally do.

23 With that, I want to thank you. Because you folks had a  
24 lot of technical questions, I'm not a technical person. I can see  
25 a forest when I see it, but that's about it -- I'd like to ask  
26 Dr. Romm to make his presentation and allow you to ask him  
27 questions about the two percent POY and so forth.

28 MR. NELSON: Mr. Chairman, while he's coming up, could I



1 clarify?

2 CHAIRMAN LOCKYER: I want to make sure you can respond to  
3 any comments that were made.

4 SENATOR AYALA: Question for the witness.

5 Would you define for me public trust interest.

6 MR. SUGAWARA: Sure. The fisheries, for instance. The  
7 viability of the fisheries, both sport and commercial; the  
8 ecological diversity of all your flora and fauna; and clean air,  
9 unpolluted streams, high quality water. Also, economic  
10 productivity is a public interest.

11 SENATOR AYALA: Thank you.

12 CHAIRMAN LOCKYER: Yes.

13 MR. NELSON: I just want, and I'll be very brief, it's  
14 been brought up two or maybe three times about how I was not in  
15 attendance at the Board meeting in Ukiah.

16 That is correct. I was not at the meeting there. I had  
17 scheduled vacation.

18 I did, however, since I could not attend, get the taped  
19 transcripts of that. There were like -- I think there were nine  
20 different tapes, and I did in fact listen to those tapes prior to  
21 anything. Just for the record.

22 CHAIRMAN LOCKYER: Do you have any comment on the  
23 philosophy that's been expressed of trying to maintain mixed  
24 forest.

25 I guess, perhaps, to add some numbers to the question,  
26 it's my understanding there are approximately a million acres of  
27 soft woods that would be largely Redwood and Douglas fir that have  
28 been harvested in California. There's essentially no replacement

1 plan for those trees.

2 Is that alarming? Is that accurate? Does the Board feel  
3 any responsibility, or you personally, toward that trend, if  
4 that's an accurate description of the trend.

5 MR. NELSON: It would be alarming if it wasn't for the  
6 fact that it is not accurate, and it hasn't been accurate for over  
7 20 years. The Z'Berg-Negedly Act provided that you must restock  
8 the land. We were one of the pioneer states in getting  
9 legislation like that. So, that is not accurate.

10 CHAIRMAN LOCKYER: Does that restock mean from that day  
11 forward, or is it retroactive? That is, do you try to restock for  
12 prior generation's use, or how does that work?

13 MR. NELSON: To some extent you can do that. It's called  
14 rehabilitation. But essentially, you're dealing with a functional  
15 equivalent of an EIR. You're granting a permit to harvest  
16 timber. One of the conditions of granting that permit is that you  
17 restock the land. So in that sense, it would be from that day  
18 forward, since it goes along with the grant of the permit.

19 CHAIRMAN LOCKYER: So, if it were a million loss, we  
20 might be talking before Negedly-Z'Berg.

21 MR. NELSON: Right.

22 CHAIRMAN LOCKYER: That might be gone because we're  
23 looking prospectively.

24 MR. NELSON: Right, but that gets to the second part of  
25 the intent of the act, which is to encourage the ongoing prudent  
26 management. I mean, it is a balance where -- certainly not with  
27 protection of the environment, but there is, with the growing  
28 population, there is a pressure to change land uses in a lot of

1 these rural counties like where I am from.

2 So, part of what the Board needs to do --

3 CHAIRMAN LOCKYER: You mean for development purposes?

4 MR. NELSON: For development, and the cost of writing a  
5 harvest plan has skyrocketed, especially for the small land owner.  
6 It's extremely expensive, and so a lot of them have to frankly  
7 think about selling their land and developing it.

8 That's always a constant thing, at least in my mind down  
9 at the Board, to somehow we've got to keep some incentives out  
10 there for these people to keep the land.

11 CHAIRMAN LOCKYER: Did L.P. over harvest at Humboldt?

12 MR. NELSON: I know you're an attorney, and so I know  
13 you'll understand this, but the process we set up to look at  
14 long-term plans, sustained yield plans, was one where we would  
15 essentially -- it's called an option, but we requested all of the  
16 industrial owners in Mendocino County to produce those. That was  
17 part of our alternative to the rule.

18 But those plans go from review to the Department of  
19 Forestry as the lead agency. The Board, in all likelihood, will  
20 be sitting in a quasi judicatory role on appeal, and I've been  
21 advised I'm really not supposed to talk about individual plans  
22 that are coming in. I don't think I can answer that question.

23 CHAIRMAN LOCKYER: I really didn't mean a plan. I meant  
24 as a matter of general policy, has there been over harvesting in  
25 Humbolt historically? Not in anticipation of any case whatsoever.

26 MR. NELSON: In Mendocino?

27 CHAIRMAN LOCKYER: No, in Humbolt.

28 MR. NELSON: I have not seen figures that would tell me



1 that, but on the other hand, I believe L.P. has said publicly that  
2 they had cut more than they were growing.

3 CHAIRMAN LOCKYER: Would that intensify their need to  
4 accelerate harvests, if that were accurate, to harvest more in  
5 Mendocino?

6 MR. NELSON: Well, it's a hard question to answer. I  
7 guess my answer would be that the statewide rules, irregardless of  
8 the Mendocino rules, what I was striving for, and I think are in  
9 those rules as far as we could get them, was to provide an  
10 incentive. Once the land owner has shown that he has satisfied  
11 the public trust resources, and that it is sustainable, the  
12 sustainable part is what gets you.

13 The more that you're growing, the more you're allowed to  
14 harvest. The less you are growing, the less you're allowed to  
15 harvest.

16 So, to answer your question, if you were in a state where  
17 you didn't have a lot of trees left on your land, you simply  
18 couldn't harvest very much.

19 I guess what I'm saying is, our proposal statewide will  
20 not go back retroactively and try to punish someone who has abused  
21 the system, if that's your opinion. But from this day forward, it  
22 can't happen again. I think therein lies the big difference  
23 between the two philosophies.

24 CHAIRMAN LOCKYER: There is some thought, and I'll ask  
25 for the gentleman to comment briefly, there is some thought that  
26 there is a supply contract between L.P. and Home Depot, which is  
27 really the source of the pressure on L.P. to harvest more in  
28 Mendocino County.

1 Are you aware of any such contract?

2 MR. NELSON: I've seen the same letter, but you're way  
3 out of my realm of authority on the Board now.

4 CHAIRMAN LOCKYER: I mean, as an employee of a company,  
5 have you seen --

6 MR. NELSON: No.

7 CHAIRMAN LOCKYER: And you wouldn't because it's your  
8 competitors, in effect.

9 MR. NELSON: Yes.

10 CHAIRMAN LOCKYER: Sort of like oil companies compete,  
11 probably.

12 Sir, you wanted to make some brief comment?  
13 Senator Petris.

14 SENATOR PETRIS: What's a silviculturist? I guess it's  
15 different from a horticulturist. What's a silvi? Something to do  
16 with a forest?

17 MR. NELSON: Do you want Professor Romm to answer or me?

18 SENATOR PETRIS: Anybody.

19 MR. NELSON: It's fairly close to on a broad term to a  
20 horticulturist. It's someone who is concerned with the science  
21 and art of growing trees. It's kind of a fancy word for a  
22 forester that generally is responsible for the growth of trees.

23 SENATOR PETRIS: Thank you.

24 CHAIRMAN LOCKYER: Professor.

25 DR. ROMM: I appreciate the opportunity to talk with you  
26 today on this issue. I think some of what I'm going to discuss  
27 has to do with the Board as whole, and then Mr. Nelson's critical  
28 role within that Board.

1 I might say at the outset what I see to be a fundamental  
2 tension between his conscience and his duties of public  
3 responsibility in the role defined within the Board.

4 My name is Jeff Romm. I teach forest policy at the  
5 University of California at Berkeley.

6 I read the Mendocino County Forest Advisory Committee's  
7 assessment of the economic impacts of alternative potential forest  
8 practice rules in Mendocino County.

9 Once the Mendocino County Board of Supervisors decided to  
10 submit its County rule proposal to the Board of Forestry, I became  
11 an advocate before the Board on behalf of the County. I assumed  
12 this role because of the quality of the public process through  
13 which the County rule proposal was formed. Not because I  
14 necessarily agreed with the proposal itself.

15 This was democracy at its fullest and best. I mean,  
16 you're talking about a five-year period, two elections, massive  
17 public involvement, and analysis.

18 I spoke on behalf of a political process that most  
19 Americans are taught to be their birthright, their vision of  
20 democracy, the essence of their citizenship.

21 I spoke as well in the hope that the Board of Forestry  
22 would display sufficient respect for this process to suggest that  
23 it might pull itself out of the mire of lost credibility into  
24 which its own loose standards of public performance had allowed it  
25 to sink.

26 As a teacher of forest policy, it is my desire to be able  
27 to bring my students into a meeting of the Board of Forestry  
28 without the danger of their disillusionment and embarrassment.



1 Today I speak solely on my own behalf. Now, this process  
2 that occurred within Mendocino County was truly extraordinary.  
3 There was nothing consensus about it. It was untidy. It was not  
4 harmonious. There was just tremendous information moving  
5 throughout the whole public in a variety of means, through the  
6 media and the like. It was really quite an extraordinary and  
7 difficult experience to be involved with.

8 I think that the Supervisors you've heard from today, who  
9 lived through that time, really displayed tremendous courage in  
10 their willingness to stick with the civil process and all the  
11 bumps that that involved.

12 When we got to the Board, the Board of Forestry, here's  
13 what we learned. A forest county does not have the standing of a  
14 forest company.

15 CHAIRMAN LOCKYER: Why is that?

16 DR. ROMM: A forest company can be held in Atlanta,  
17 Georgia. It can be someone who moved in within the last six  
18 months. It might be one family's holding. But that company will  
19 be given privilege within the Board of Forestry in terms of time,  
20 civility, the whole range.

21 We have video tapes of these processes if you want to get  
22 the true, full impact of what I'm trying to convey.

23 CHAIRMAN LOCKYER: I've watched the video tapes. It's  
24 hard when you're on this side of the podium to always be alert.  
25 Some of the supervisors probably understand that as well.

26 There did seem to be instances of sort of blatant  
27 disrespect for people who wanted to testify.

28 DR. ROMM: We have other video tapes of prior times

1 before Mendocino proposals, during the regulatory reform, when  
2 honestly, if you were an outsider coming into the room you  
3 wouldn't have been able to tell the difference between the Board  
4 members and the lobbyists and lawyers who bellied up to the Board  
5 and who were in the process of exchanging and discussing the  
6 regulations that were being formed. I think you would be welcome  
7 to look at this video tape and to consider what the public sees.

8 CHAIRMAN LOCKYER: What duty does an industry  
9 representative on a board of this sort have? If you're appointed  
10 to be an industry representative, do you have some duty that's  
11 broader?

12 DR. ROMM: In my view, one cannot enter the Board of  
13 Forestry without acknowledging some commitment to something called  
14 the public interest, to something called the public interest.

15 There is an oath taken that acknowledges some  
16 responsibility to the state, and to the people of the state, to  
17 the well being of the people of the state.

18 And in my view, it is not an industry representative's  
19 opportunity to totally withdraw from that responsibility, that he  
20 accepts an oath, and as part of accepting the privileges and the  
21 powers of being in a Board of Forestry. Nor is it even -- if it  
22 was rendered in terms of conscience within total discretion of an  
23 individual to indulge his conscience at the expense of standards  
24 of public performance that would seem acceptable generally to the  
25 public; to forego commitments made by oath; to forego the law that  
26 creates the very board in which he is operating; to forego even a  
27 general appreciation for the problem of legitimacy of boards with  
28 the public at large, the loss of credibility when a narrower and

1 narrower political base is used to support the outcomes of that  
2 board.

3 Now this is not Mr. Nelson's problem. This is what has  
4 been happening in the Board of Forestry.

5 The issue is that Mr. Nelson is really the most  
6 effective, most visible, best representative of this majority that  
7 has moved the Board in this direction. He is the leader of the  
8 majority of the Board that has gradually eroded the scope and the  
9 accountability of the Board of Forestry.

10 He is not responsible totally, but he is a key part of  
11 this process.

12 I want to add that Mr. Rogers is not. That in the  
13 Mendocino process, and something that has not been brought up yet,  
14 there was an effort by the Forest Practice Committee of the Board  
15 of Forestry to come up with a solution that combined the elements  
16 of the Mendocino proposal and the elements that made it more  
17 consistent with state regulation. And I think they came up with  
18 superior policy to what Mendocino had proposed and what the state  
19 already had.

20 Mr. Rogers and Mr. Heald were key parts of that. And I  
21 felt it was an extremely constructive and important way to  
22 perform.

23 But of course, the majority of the Board did not even  
24 listen to the arguments on behalf of that package. And its  
25 arguments were for consistency.

26 I think -- I have very high regard for Mr. Nelson. His  
27 attainments and his abilities are quite remarkable. But I think  
28 they have been seriously misused. I believe that they have taken



1 on a life of their own that goes beyond the restrictiveness that  
2 is provided in law, in oath, in the general common sense for the  
3 accountability to a public, that has taken on its own life under  
4 if guise of conscience.

5 I might argue that the difference between conscience and  
6 self interest becomes a very gray area. And I would really be  
7 interested in those areas in which conscience has deviated from  
8 the interests of Mr. Nelson's owner at any time during the time of  
9 his representation on the Board of Forestry.

10 In any case, we have witnessed a corruption of public  
11 process in the Board of Forestry that is really tragic. It's  
12 really tragic. I don't know if this is going on other boards and  
13 commissions around the state.

14 If it is true that it is, and I've heard things said,  
15 then the anger of our public is really justifiable because these  
16 boards and commissions have simply lost any sense of  
17 accountability to the people, or even to you, the Legislators who  
18 presumably create the framework in which they're supposed to  
19 operate.

20 SENATOR LEWIS: Question, Professor.

21 Clearly, you disagree with his vote on the Mendocino  
22 plan.

23 But is it your contention that by voting against the  
24 plan, he was anyway violative of the Act itself or state law?

25 MR. ROMM: No, he did not violate the letter of the law.  
26 The letter of the law, as I understand it, gives to the Board the  
27 authority of approving or rejecting a county request.

28 In my view, purely my view, he violated the intent of the

1 law, which is to deal with the problems of forestry in this state  
2 in an effective and equitable manner. It is a law that has sought  
3 to in fact directly rebuild the losses of capital, of forest  
4 capital that we experienced for so long in this state, to build up  
5 the stock.

6 And it is precisely that problem that the Mendocino  
7 proposal addressed. The empirical evidence demonstrates from a  
8 variety of sources, from William MacKillup to the California  
9 Department of Forestry, to our studies at Berkeley, a sharp  
10 decline in the inventory of the industrial land base in Mendocino  
11 County that is extraordinary and leads, if you will follow it  
12 through its conclusion, to total dessimation, total disappearance  
13 of stocking, within a twenty-year period.

14 SENATOR LEWIS: The problem is, reasonable people can  
15 disagree, and it sounds like Mr. Nelson's making a case that he  
16 thought that the two percent limitation just went overboard.

17 MR. ROMM: Well, he is being misleading here, because by  
18 the time that the vote came up, the Heald-Rogers vote came up.  
19 There was now an increased flexibility for land owners, and there  
20 was the opportunity to take on state rule measures that were  
21 consistent with the POI rule. So, it had changed.

22 If he says that he's voting against POI, then he's  
23 misleading you because that was already voted down.

24 A compromise had come up, three votes for, and then Mr.  
25 Nelson's majority against, with Terry Gorton's great assistance on  
26 this.

27 That was consistent with state rules. That was not  
28 strictly POI that gave discretion to land owners in the choice and

1 the kinds of rules they may choose.

2 So, has been an incorrect element in this presentation.

3 SENATOR LEWIS: Mr. Nelson, would you like to comment on  
4 that?

5 MR. NELSON: I think you already categorized it. We have  
6 a disagreement on how we think the intent of the Forest Practice  
7 Act is to be interpreted.

8 And I really think that was at the heart of a lot of  
9 this.

10 I would also like to say that I am one of three industry  
11 representatives on that nine-person Board. While I'm flattered  
12 that I'm a leader of a majority of the Board, I am, by statute, in  
13 the minority on the Board. So, I just wanted to make that clear.

14 Secondly, I wanted to bring up that there have, in fact,  
15 been many instances when I have taken votes on my conscience that  
16 have been contrary to what my company, that I work for normally --  
17 and I could bring up one gigantic one which was, I voted for the  
18 infamous emergency rule in 1991, which were put in place and later  
19 thrown out by the courts. And virtually the entire industry was  
20 very opposed to those.

21 And there are other instances, too, but I was categorized  
22 as voting along company lines. And I do not do that. I do not  
23 vote along the Governor's lines, either. I could show you  
24 instances where the Secretary of Resources had advocated a  
25 position. I immediately made a proposal that was contrary to  
26 that.

27 So, I think you understand that this is not a lot unlike  
28 what you do. I've voted contrary to just about every interest



1 group I can think of, but I don't know how else to do it. I have  
2 to look at myself in the morning, and I have to vote my  
3 conscience.

4 So, I would disagree with that point. The other thing is  
5 that --

6 CHAIRMAN LOCKYER: Do you disagree with the observation  
7 that empirical data would tend to suggest that the rate of  
8 depletion of the resource is as significant and dramatic as the  
9 Professor has suggested?

10 MR. NELSON: I might take exception, but it really  
11 doesn't matter because the state rules that were put in, in my  
12 opinion, fixed that problem. They don't go back, and they don't  
13 punish someone who might have done that in the past, but they do,  
14 in my mind, make it impossible for that to happen again, which, in  
15 my opinion, is a good policy. It is not sufficient to satisfy the  
16 needs of --

17 CHAIRMAN LOCKYER: Let me ask that same thing of the  
18 Professor.

19 When you're referring to the trend, are you referring to  
20 practices before the contemporary sustained yield philosophy?  
21 That is, the trend -- there should be restoration and  
22 rehabilitation happening that, over time, would not make the  
23 problem worse?

24 MR. ROMM: The trend of depletion in Mendocino County  
25 continued from the initiation of the Forest Practice Act in 1973,  
26 consistently. The sustained yield plan that came through from  
27 Lousiana-Pacific continued the trend, despite the embodiment of  
28 the existing rules of the state.

1           Our analysis of the state rules and the County proposal  
2 on Mendocino County showed that the state rules worked better on  
3 the inland Sierra types of the County, and the County rules worked  
4 better on the coastal area, which is the area of contest.

5           I think the evidence that forest practice rules have not  
6 worked in Mendocino County in the coast, the evidence is  
7 dramatic. I think a large part of this comes because the forest  
8 practice rules themselves come out of a Sierra orientation and  
9 have not dealt with conditions where rapid depletion was  
10 continuing; have dealt with conditions instead where stock had  
11 already stabilized at some level, and where it was then fair to  
12 talk about improving forest practices to lift that level up on a  
13 gradual basis.

14           CHAIRMAN LOCKYER: So, you would think depletion is  
15 continuing on the coast?

16           MR. ROMM: Yes.

17           CHAIRMAN LOCKYER: Senator Ayala.

18           SENATOR AYALA: Mr. Nelson, you are the representative of  
19 the industry?

20           MR. NELSON: I'm one of three, yes, sir.

21           SENATOR AYALA: We expect you to represent the industry.

22           Do you think you represent industry fairly, the large  
23 company smaller company, the middle-size companies? Have you been  
24 fair with all of these different sizes of companies that are  
25 making up the industry.

26           MR. NELSON: Yes, sir, I do. Let me also make it clear  
27 that I don't have a constituency. I'm not an elected  
28 representative.

1 I am on the Board as an industry rep because of my  
2 background and my knowledge, and I'd like to think because  
3 whatever rules we come up with, there needs to be someone with  
4 some expertise from the industry as a pragmatic check to see  
5 whether or not it'll work.

6 SENATOR AYALA: In a way, you do have a constituency, the  
7 industry. That's whom you represent, so you do have a  
8 constituency.

9 MR. NELSON: I'm not sure I would agree with you, sir.

10 I don't feel that I have a constituency.

11 CHAIRMAN LOCKYER: Have you concluded, sir?

12 MR. ROMM: If you're finished with me.

13 CHAIRMAN LOCKYER: Unless you had anything else to add, I  
14 guess so. I think I'd like to sign up for your class someday. It  
15 might be interesting.

16 If there's anyone who really wanted to say something  
17 different than kind of the Mendocino issue, that hasn't been  
18 commented on, then that's what we'd like to get to briefly.

19 MS. ROSEN: Thank you for the opportunity to comment on  
20 the proposed confirmation of Tom Nelson.

21 My name's Elyssa Rosen, and I'm speaking on behalf of the  
22 Sierra Club, members throughout California. We strongly opposed  
23 this confirmation.

24 I'm director of Sierra Club's Salmon Forever Campaign.  
25 And in that capacity, I've had the opportunity to examine Board of  
26 Forestry actions that affect water courses and their ability to  
27 support salmon.

28 Based on that review, it appears that the Board of



1 Forestry's failure to adopt reasonable water course regulations  
2 is a primary cause for a depletion of Coho salmon in California.  
3 The Coho population here is in a condition so critical that a  
4 listing this year under the federal Endangered Species Act appears  
5 virtually certain.

6 The threats of this listing has forced the state to  
7 initiate an elaborate, costly process to recover this once  
8 thriving resource. This process would have been unnecessary if  
9 the Board of Forestry had fulfilled its mandate by adopting  
10 regulations that protect our water and fisheries.

11 As a senior industry representative on the Board, Tom  
12 Nelson has been instrumental in every important decision that the  
13 Board has made during his tenure. He's persuaded Board members  
14 with less technical expertise to adopt regulations that solely  
15 benefit industry and do not protect the public's interest in water  
16 quality and wildlife.

17 Although he's been appointed as an industry  
18 representative, the Forest Practices Act is clear that all Board  
19 members must represent the interests of the public as a whole.

20 Because he's been so instrumental in guiding Board  
21 policy, any general indictment of the Board of Forestry points to  
22 an indictment of Tom Nelson himself.

23 Regarding unfulfilled Clean Water Act mandates, had the  
24 California Board of Forestry met its Clean Water Act obligations,  
25 the Coho might not be threatened or endangered today.

26 A recent California Department of Forestry sponsored  
27 survey of its own forest practice, inspectors, regional water  
28 quality control specialists, and Department of Fish and Game staff

1 makes it clear that the California Board has failed to provide  
2 adequate water quality protection rules in areas critical to Coho  
3 and other cold water fish species, yet corrective action does not  
4 appear to be forthcoming.

5 State and federal recommendations for a monitoring  
6 program for the rules dates back to 1984, but no program has been  
7 implemented. Without a monitoring program, the CDF survey of  
8 field inspectors becomes our chief evidence that the Board of  
9 Forestry rules are ineffective to protect water quality and Coho  
10 habitat.

11 CDF published its questionnaires results last January,  
12 and later included the water quality and Fish and Game responses  
13 which must be characterized as negative. CDF's own responses were  
14 mixed with a strong component of dissatisfaction.

15 Although the Board has had the survey results in hand for  
16 more than a year, it's failed to adopt obvious needed changes.

17 I urge the Committee to read the questions and responses  
18 cited from the survey in our testimony. A lot of them include  
19 such things as canopy for streams that protect water courses and  
20 fish from high temperatures and sediment, and those canopies have  
21 been quite in sorry shape. And the Department of Forestry  
22 representatives, as well as Fish and Game staff, have attested to  
23 that.

24 Regarding designating Coho as a sensitive species, in  
25 December of 1993, the Department of Fish and Game formally  
26 petitioned the Board of Forestry to list Coho salmon as a  
27 sensitive species, and supported its petition with substantial  
28 evidence.

1           The Board of Forestry scheduled hearings and issued a  
2 series of proposed rule packages. Sierra Club, many other  
3 organizations and experts commented in support of the sensitive  
4 species designation, and after more than a year of public  
5 discussion, and in spite of CDF personnel survey results, last  
6 February the Board dropped the proposal to designate Coho and  
7 declare that the existing rules were adequate.

8           In the wake of delayed federal listing and Congressional  
9 elections that threatened to gut environmental laws, the Board  
10 stopped making any effort, despite overwhelming evidence, that  
11 Coho needed additional protection immediately. Basically,  
12 ignoring the petition and 13 months of public testimony amounted  
13 to a violation of public trust. And because of Board inaction,  
14 we've had avoidable damage to fish-bearing water ways.

15           I just want to mention the problems that we've had with  
16 Board of Forestry rules that were supposed to be certified as best  
17 management practices in order to be certified by EPA, and transfer  
18 the ability-- transfer the authority to the Board of Forestry to  
19 go ahead with these rules.

20           This has never occurred. Ever since 1977, EPA, State of  
21 California, and the public have been discussing how to make these  
22 rules more effective, and how to make them best management  
23 practices as certified under EPA. And more than decade later,  
24 there is no monitoring program, which is required under the Clean  
25 Water Act, and the EPA continues to refuse to certify the Board  
26 rules as BMPs.

27           I'd like to point out that even without a scientifically  
28 verifiable monitoring program, the very fact of the proposed Coho



1 listing indicates that the Board of Forestry rules are not only  
2 not certified as best management practices, but they are not best  
3 management practices.

4 I have focused only on one of the many areas where the  
5 Board of Forestry has failed in its duty to protect our state's  
6 public trust resources, and in closing, I ask that you deny the  
7 confirmation of Governor Wilson's appointment of Tom Nelson to the  
8 California Board of Forestry.

9 I turn it over to Zeke Grader.

10 CHAIRMAN LOCKYER: Question, Senator Lewis.

11 SENATOR LEWIS: There's nine members of the Board. Three  
12 of the members are members from the forest products industry.

13 Do you think that's excessive?

14 MS. ROSEN: No, no.

15 CHAIRMAN LOCKYER: Mr. Grader.

16 MR. GRADER: Yes, Mr, chairman Members of the rules  
17 committee.

18 My name is Zeke Grader. I'm the Executive Director for  
19 the Pacific Coast Federation of Fishermen's Associations. We  
20 represent working men and women in California's commercial fishing  
21 industry, including what's left of its salmon fishery.

22 I want to point out emphatically, we are not an  
23 environmental group. We are a trade organization.

24 Our concern here today with the Board of Forestry is what  
25 we think has been its failure to take actions that have been  
26 necessary to assure that not only forest lands were protected, and  
27 the forest industry, but also those other economic interests that  
28 are affected by timber harvest practices.

1           As has been mentioned, the Board had a petition that was  
2 brought to it in 1993 by the California Department of Fish and  
3 Game to simply institute some sensitive rules to assure that Coho  
4 salmon populations in its watersheds would be protected.

5           That was, incidentally, the same year that all Coho  
6 fishing along the west coast for the first time in history was  
7 banned in order to try and provide additional protections for  
8 those stocks. In fact, our industry we'd seen for the past two  
9 decades continued increasingly restrictive regulations placed on  
10 fishing as an effort to try and protect the stocks, but we've seen  
11 absolutely nothing done as far as protecting their habitat and  
12 their watersheds.

13           What happened in effect is that after a few hearings, is  
14 that these sensitive rules have in a sense gone into a black  
15 hole. To our knowledge, there never has been any formal response  
16 made to the Department of Fish and Game, other than the statement  
17 from the Board that the existing rules are adequate.

18           Well, quite clearly, they're not. And I think the state  
19 will probably find this out rudely in July, when the Coho salmon  
20 in California and probably southern Oregon are listed as  
21 threatened under the Endangered Species Act. And then at that  
22 point, much of this is going to be probably out of California's  
23 control unless we very quickly put into place some rules that will  
24 protect these resources.

25           So, from that standpoint, I think where we had home rule  
26 as far as California perhaps having some say over how we're going  
27 to protect Coho, it may be taken out of our hands to an extent  
28 that our failure to act is now bringing in the federal

1 government. This should have been unnecessary.

2 I should say at the same time that these sensitive rules  
3 were being proposed, that our industry was sitting down with the  
4 timber industry and beginning to look at what could be done to  
5 protect these resources. We were making progress. I think that  
6 there was acknowledgment, particularly among the coastal timber  
7 land owners, that actions had to be taken.

8 But, however, there seemed to be a disconnect between  
9 what we were doing in meetings in places such as Ukiah and Eureka,  
10 and Fort Bragg and elsewhere, versus what was happening with the  
11 Board of Forestry here in Sacramento, because they apparently did  
12 not get the message that unless we acted quickly, this run of fish  
13 was going to end up getting listed. And indeed, that appears to  
14 be what will now happen.

15 Secondly, I think as far as the monitoring goes,  
16 California proudly argues that we have the toughest forest  
17 practices in the nation. Well, that may be, but we don't know.  
18 The reason we don't know is, we don't have any monitoring.

19 We don't know, first of all, whether or not our rules are  
20 working. There's been mention about our sustained yield rules now  
21 in place, our sensitive watershed rules. The fact is, we have no  
22 monitoring going on out there and the Board knows this. It's been  
23 repeatedly told this.

24 We don't know if these rules are working or not, if  
25 they're effective.

26 Furthermore, we don't even know if they are working, if  
27 they are good rules, whether they're being followed, because  
28 again, we have no monitoring.



1           This Board has been derelict as far as seeing to it that  
2 the rules it promulgates are even monitored so we know, one,  
3 whether they're working, and two, whether they're being followed.  
4 That's all on the record.

5           Third issue is the issue of independence of the State  
6 Board. I'm not going to get into the Mendocino County issues. We  
7 didn't take a position one way or another on the Mendocino  
8 County's rule.

9           But I think the critical thing there was that the  
10 Governor's Office dictated, clearly, the way the Board came down  
11 on that vote.

12           The interesting thing here is that one of the people  
13 that's not up before you for confirmation today was a person who  
14 chose to take an independent course from where the Governor's  
15 Office wanted the vote to go. He's not been reappointed.

16           The Governor's Office called the shots on that one,  
17 clearly. And I think there's adequate -- so, that's fine. The  
18 Governor's Office has a position. No problem. They're allowed to  
19 have positions on these things.

20           But if they're going to be telling the Board how to vote  
21 on these issues, why have a board? Why not save the money, save  
22 your time in these confirmation hearings and just get rid of that  
23 and tell the Governor's Office, if they're going to say how forest  
24 rules are made in California, and how they're going to be  
25 enforced, let them do it then. Why bother with the charade of a  
26 board?

27           That's been the problem with this Board. It has not been  
28 independent. Those who have shown some independence sure as hell

1 don't show it before you in a second time.

2 So, that's the problem, and that's the reason that we  
3 would urge you to reject both Mr. Nelson and Mr. Rogers, and ask  
4 the Governor's Office to send before you some independent people  
5 who will make independent decisions, who are knowledgeable, and I  
6 think perhaps reflect a better balance of interests, not having  
7 three strong industry representatives.

8 And I have no problem. I think industry representatives  
9 play a role on there, but then also have other members that are  
10 also knowledgeable, also perhaps from the same areas, those same  
11 communities who, perhaps, have a little bit different interest in  
12 the way the forest practices are conducted.

13 Thank you.

14 CHAIRMAN LOCKYER: One of the risks I should point out  
15 is, there are a few times, not often but once in a while, we do  
16 turn one down that we think is not sufficiently independent of  
17 political influences. By and large, we get somebody worse after.

18 Thank you.

19 Were there others that had wished to comment at all at  
20 this time? Have we concluded with any public testimony.

21 My sense of the Committee, and partly looking at the  
22 agenda, I think we need to take a break because we're looking at  
23 another hour-and-a-half probably before not just this matter, but  
24 the whole thing gets completed.

25 Listening on Mr. Rogers, that will probably be much  
26 shorter now because I think most of the same concerns will just --  
27 sit because "N" comes before "R", do you think, is that what does  
28 it, that you get to be the hot seat?

1 MR. NELSON: Luck of the draw.

2 CHAIRMAN LOCKYER: I guess that's why.

3 But that may be faster. But then we have a number of  
4 other items, both in public and Executive Session that we do need  
5 to complete today.

6 I'd recommend to you that we break for half an hour so  
7 somebody could get a sandwich if they need to, but to try to get  
8 started again shortly after 2:00.

9 Then we will start with you, Mr. Nelson, to respond.

10 [Thereupon a brief recess was taken.]

11 CHAIRMAN LOCKYER: We have a quorum present, at least, so  
12 I think we can resume.

13 Mr. Nelson, I wanted to start with giving you an  
14 opportunity to comment and respond to anything you heard this  
15 morning. I know you did on various occasions, but if there's  
16 anything additional, you may comment.

17 MR. NELSON: To be perfectly honest with you, I don't  
18 have a lot of responses that I haven't already put in.

19 I'll be happy to answer any more questions.

20 CHAIRMAN LOCKYER: Let me ask if there are additional  
21 questions of Mr. Nelson.

22 See how good it is to take a break? It moves you right  
23 along.

24 I'm going to recommend to the Committee, since we have  
25 two appointees in similar issues, that we hear both, and then  
26 we'll have to vote today, one way or the other. If you'll bear  
27 with us for a while, we'll ask Mr. Rogers to come up.

28 MR. NELSON: Do you want me to sit down in the meantime?



1 CHAIRMAN LOCKYER: Yes, then if you want to come back,  
2 you're welcome to if you hear anything in the remainder of the  
3 discussion.

4 Mr. Rogers, how's your neighborhood?

5 MR. ROGERS: I left my sweater at home.

6 CHAIRMAN LOCKYER: We've decided you have to have a beard  
7 to be associated with forestry, regardless of your philosophy. Is  
8 that how it works?

9 MR. ROGERS: It's just further indication that we're all  
10 the same person.

11 CHAIRMAN LOCKYER: You're clicking right into the theme.  
12 Do you want to start with any comment?

13 MR. ROGERS: I thought I would.

14 Mr. Chairman and Senators, I'm a public member of the  
15 Board of Forestry, which I think has been made abundantly clear,  
16 and I've served for two years.

17 I was brought in just as the new Board rules were puts  
18 into effect. In fact, I was one of the Five-four votes to get the  
19 new rules into effect. That was literally my first meeting. It  
20 was kind of fun.

21 I'm not a registered professional forester, nor am I  
22 associated with the forest products industry.

23 I bring to the Board my management experience as chairman  
24 of the board of an environmental horticulture firm, with  
25 production and distribution locations throughout California and  
26 Nevada.

27 I also bring a commitment to conservation of long  
28 standing. My interest started back in the '50s when, as a young

1 boy and eventually an Eagle Scout, I spent much of my summers in  
2 the Sierra.

3 For many years, I worked with community forest  
4 organizations and projects, such as activities of the tree people  
5 in Los Angeles. My extracurricular activities when not busy with  
6 the Board of Forestry concentrate on my job as President of the  
7 Board of Trustees of the Santa Barbara Botanic Garden.

8 For those not familiar with the Botanic Garden, it's an  
9 internationally known organization for research, education,  
10 conservation, and the display of California native plants.

11 Considering this experience, I was selected by the  
12 Chairman of the Board of Forestry to chair the Forest Practice  
13 Committee, whose two other members are highly qualified  
14 professional foresters, one of whom you've just had intimate  
15 contact with. The other is the Bob Heald, who was mentioned by  
16 many people from Mendocino as a very positive factor. He's the  
17 manager of Blodgett Forest.

18 My job is to evaluate the technical input of both of  
19 those gentlemen and to attempt, whenever feasible, to reach  
20 consensus or compromise on my committee's recommendations to the  
21 general Board. That's basically what I attempt to do as Chairman  
22 of Forest Practice.

23 My view of the future of forestry regulations in  
24 California is that radical departure from the current prescriptive  
25 nature of the rules and their attendant massive costs, complexity,  
26 and questionable focus must be attained if we are to protect the  
27 public resources and the long-term viability of the forest  
28 products industry here in California.

1           Such a departure would entail, in my view, a change in  
2 the law, most undoubtedly, such that a more global approach to  
3 permitting of timber harvesting plans, perhaps entire watersheds,  
4 would be possible at a single time. The idea would be to lighten  
5 the cost to the regulated public and the general public, who has  
6 to, by the way, attend all these pre-harvest meetings and  
7 inspections, in order to protect the public trust while improving  
8 resource protection.

9           Thank you.

10          CHAIRMAN LOCKYER: Okay.

11          Do you have any observations or reactions to all of the  
12 commentary you heard this morning?

13          MR. ROGERS: Yes, I do.

14          At the risk of getting a little emotional along with  
15 Seiji, it's an awful situation. You're seeing something that my  
16 committee sees almost every single time it meets. Our debates are  
17 legion. Our committee meetings last, probably like yours, into  
18 the night.

19          CHAIRMAN LOCKYER: You volunteered for this  
20 work.

21          MR. ROGERS: Yeah, my wife just said the same thing to me  
22 last night. Yes, I did.

23          I feel, you know, my sense of this -- obviously, I don't  
24 have to do this. But my sense of this is that you don't rate  
25 complaining about things that are going on in state government or  
26 national government unless you stick up your hand and do the stuff  
27 that's not so easy. That's my own personal commitment.

28          My wife feels exactly the same way. She's a Regional



1 Water Quality Board member, L.A. Environmental Commissioner.

2 She's an anthropologist; Ph.D., UCLA. She's very seriously much  
3 the same way. We have our own little microcosm of interests.

4 It isn't -- I think we're making progress. I believe the  
5 new rules that went into effect two years ago are going to make a  
6 difference.

7 But even if they don't, I believe that the dialogue is  
8 changing. I believe that the environmental organizations,  
9 particularly the ones that are the omnibus organizations, the ones  
10 that represent others, have a tendency to take a much more  
11 ecumenical view and are less confrontational.

12 The problem we have on the Board of Forestry is the  
13 problem that I'm sure you're excruciatingly familiar with, which  
14 is, oftentimes the people who are associations and ostensibly  
15 represent industry groups or represent some public trust, tend to  
16 be shrill, and they tend to be, as Eric Hoffer said, the true  
17 believers. You know, they're out on the opposite ends of the  
18 spectrum.

19 As a consequence, since they are extremely vocal, and  
20 very aggressive, and very interested in showing up and getting  
21 themselves heard, tend to dominate the dialogue. So in a sense,  
22 the dialogue is dominated by the lowest common denominator.

23 And whenever you are attempting to do something that is  
24 -- the truth, as we all know, probably lies somewhere in the  
25 middle there, and whenever you try to get these groups towards  
26 some form of consensus, almost every single time they have to go  
27 back to their constituency and report the distance they lost. And  
28 it's hard to do fundraising; it's hard to frighten people; it's

1 hard to do a lot of stuff, you know, and keep your hat on, but  
2 that's what you do.

3 So, we have a very difficult process hear. And my sense  
4 of this is that we should start all over again. And that's my  
5 comment and my opening remarks about having much more global, much  
6 more watersheds approaches to this problem.

7 Now, I do believe that the public --

8 CHAIRMAN LOCKYER: You mean rather than sort of parcel by  
9 parcel?

10 MR. ROGERS: This parcel by parcel business is  
11 transaction driven overhead, with which you're intimately familiar  
12 here. All it does is, it exercises the public, both the regulated  
13 public and the public who are trying to be certain that the  
14 resources are being protected.

15 I mean, if you're just a volunteer type person, and  
16 you're worried about a watershed in your watershed group, or  
17 you're one of these fishermen, or something like that, you've got  
18 to send someone to show up on every single one of these darn  
19 inspections, or else maybe there's going to be resource damage  
20 from your perspective.

21 I'm not suggesting that the rules are not good enough to  
22 preclude that, but you don't have that trust.

23 CHAIRMAN LOCKYER: Sir, the evidence in the record and  
24 testimony suggests that the fishermen have got a problem, that  
25 there are rapidly deteriorating fisheries, and that on-shore  
26 activities are responsible for a significant, if not major, cause  
27 of those declines.

28 Do you share that general feeling?

1 MR. ROGERS: I share that as an anecdotal feeling,  
2 Senator.

3 The problem that we have, and the reason that we did not  
4 go along with the sensitive species -- and in fact I did vote to  
5 not go along with the sensitive species -- you heard that my votes  
6 for Mendocino County went in a different direction. But in this  
7 case, I went along with it because we had to demonstrate that our  
8 rules, the current, existing Board rules, would lead to the future  
9 degradation of the resource. They just went into effect two years  
10 ago.

11 CHAIRMAN LOCKYER: So, the burden was on you, in  
12 effect?

13 MR. ROGERS: Very much so. What is missing here, and  
14 we're talking about the Board of Forestry right here, as if it  
15 all existed in Mendocino County and the North Coast.

16 Eighty-five percent of our budget, as you know very well,  
17 is fire. You can imagine what it's like to get monitoring funds  
18 allocated to forest -- ground truthing of the efficacy of certain  
19 timber harvest plans when, in fact -- you know, you're probably  
20 intimately involved with with the budget -- you know there is no  
21 budget for that. And the only thing that we could do was cut back  
22 further on fire protection, or vegetative management for fire  
23 prevention.

24 These things -- interestingly enough, 99 percent of the  
25 politics, other than the super scooper, is what we are discussing  
26 today, and 85 percent of the budget goes the other way. And  
27 rightly so, because the people of the State of California, the  
28 public trust resource that they want protected is their house and



1 its surrounding environs.

2 That's very difficult for us.

3 CHAIRMAN LOCKYER: Questions? How about over here.

4 The testimony suggested that you were involved in some  
5 efforts to compromise with respect to the Mendocino --

6 MR. ROGERS: Yes, Senator. Myself and the other Forest  
7 Practice Committee member, Bob Heald. We got together and tried  
8 to put together a compromise, which I'm glad Dr. Romm suggested  
9 was a pretty good one. We thought it was great, but we lost six  
10 to three on the Board.

11 It doesn't mean that the six were bad people. My own  
12 sense of my fellow Board members is not that at all. I think  
13 they're all very conscientious, and they work real hard to get the  
14 job done.

15 CHAIRMAN LOCKYER: Pacific Earth Resources, what's the  
16 nature of your business?

17 MR. ROGERS: We are an environmental horticulture firm,  
18 which means we grow ornamental trees, wild flowers, ground covers,  
19 turf grass, things of this nature.

20 CHAIRMAN LOCKYER: Is it all in one location?

21 MR. ROGERS: No, we're located all over the state. We  
22 have locations in Modesto, Brentwood, San Juan Bautista,  
23 Tehachapi, Camarillo, and in Nevada as well.

24 CHAIRMAN LOCKYER: Did anyone who has commented earlier  
25 wish to say something that is sort of different, or that hasn't  
26 been said already with respect to the general array of issues  
27 before this Board that would be a different comment with respect  
28 to Mr. Rogers than we heard on Mr. Nelson, or the Board in a

1 general way? Apparently not.

2 Did you want to conclude in any way?

3 MR. ROGERS: No, Senator. Thank you very much for the  
4 opportunity to speak with you.

5 CHAIRMAN LOCKYER: Thank you, sir.

6 I think we need to give Senator Petris a five-minute  
7 recess here. We'll do that and let him come back.

8 [Thereupon a brief recess was taken.]  
9 .

10 CHAIRMAN LOCKYER: Let's try to wrap up our work on  
11 Misters Nelson and Rogers. Maybe I'll begin just with a comment.

12 One of the hardest things we ever do is turn an appointee  
13 down. We don't do it often, partly because, I guess, it's just  
14 human nature to want to be more agreeable. It's contrary to that  
15 disposition, as well as the fact that we think that the Governor's  
16 entitled to significant respect for his appointees.

17 At least for myself, it seems that there's been  
18 sufficient controversy to have the Rules Committee indicate to the  
19 Board and appointing authorities that there needs to be a slightly  
20 better balance of appointments made to this body.

21 And for that reason, I intend, at least, to support the  
22 confirmation of Mr. Rogers but not Mr. Nelson.

23 I would like, though, to very quickly say to Mr. Nelson,  
24 since you're still with us, that I was very impressed with your  
25 testimony and professionalism. I can see why many of the members  
26 of the public that commented thought that, perhaps, you were  
27 unduly influential because of your persuasive abilities and  
28 knowledge. I don't want to fail to acknowledge those.

1 I guess it's sort of a feeling like I wish you were a  
2 friend I went backpacking with, rather than somebody I had to vote  
3 on in this way.

4 Anyhow, it's not so much a matter of personal qualities,  
5 because those were outstanding, but a feeling that there's just a  
6 little too much industry influence and resulting disregard for  
7 well-intentioned local efforts, such as Mendocino County's that I  
8 reach that conclusion.

9 It's not easy, and I just want to make that clear to  
10 you.

11 Having said that, I'll entertain a motion on either Mr.  
12 Rogers or Mr. Nelson.

13 SENATOR AYALA: I'll move Item Six, confirmation of Mr.  
14 Rogers to the State Board of Forestry.

15 CHAIRMAN LOCKYER: Mr. Rogers is before us, if you'll  
16 call the roll?

17 SECRETARY WEBB: Senator Ayala.

18 SENATOR AYALA: Aye.

19 SECRETARY WEBB: Ayala aye. Senator Lewis. Senator  
20 Petris.

21 SENATOR PETRIS: Aye.

22 SECRETARY WEBB: Petris aye. Senator Beverly.

23 SENATOR BEVERLY: Aye.

24 SECRETARY WEBB: Beverly Aye. Senator Lockyer.

25 CHAIRMAN LOCKYER: Aye.

26 SECRETARY WEBB: Lockyer aye. Four to zero.

27 CHAIRMAN LOCKYER: Senator Beverly, do you wish to enter  
28 a motion?



1           SENATOR BEVERLY: Would you look favorably upon a motion  
2 to send it to the Floor without recommendation?

3           CHAIRMAN LOCKYER: No, I think we've --

4           SENATOR BEVERLY: You're no on either one. I'll move  
5 confirmation.

6           CHAIRMAN LOCKYER: We have a motion to confirm Mr. Nelson  
7 by Senator Beverly.

8           Call the roll on that, please.

9           SECRETARY WEBB: Senator Ayala. Senator Lewis. Senator  
10 Petris. Senator Beverly.

11          SENATOR BEVERLY: Aye.

12          SECRETARY WEBB: Beverly aye. Senator Lockyer.

13          CHAIRMAN LOCKYER: No.

14          SECRETARY WEBB: Lockyer no.

15          SENATOR BEVERLY: Move a call.

16          CHAIRMAN LOCKYER: Okay, we'll move a call.

17                   [Thereupon this portion of the  
18 Senate Rules Committee hearing was  
19 terminated at approximately 3:43 P.M.]

20                   --ooOoo--

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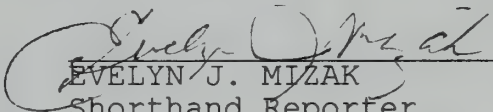
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IN WITNESS WHEREOF, I have hereunto set my hand this 22<sup>nd</sup> day of January, 1996.

  
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SENATOR ROBERT BEVERLY, Vice Chair

SENATOR RUBEN AYALA

SENATOR JOHN LEWIS

SENATOR NICHOLAS PETRIS

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

ROBERT C. FRAZEE, Member  
California Integrated Waste Management Board

SENATOR WILLIAM CRAVEN

JESSE R. HUFF, Director  
Toxics Substances Control  
California Environmental Protection Agency

SENATOR CHARLES M. CALDERON

PETER H. WEINER  
Heller, Ehrman, White and McAuliffe

MARC A. APREA  
Browning-Ferris Industries

RAHMAN SHABAZZ, President  
Community Coalition for Change

THOMAS E. BUSFIELD  
Rose Drive Community Action Committee

CATHY TURNER  
Channing Circle Residents Group

LORRAINE E. SCIALABBA  
FORD, Friends of Rose Drive

1 BRADLEY ANGEL, Coordinator  
2 Southwest Toxics Campaign  
3 Greenpeace USA

4 STORMY WILLIAMS, President  
5 California Communities against Toxics

6 JANE WILLIAMS  
7 Desert Citizens against Pollution

8 THOMAS P. NAGLE, Deputy Secretary  
9 Health and Welfare Agency  
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P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

SENATOR PETRIS: Now we have Governor's appointees appearing today. We have a distinguished former Member of the Assembly first on the list, Mr. Robert Frazee, who's been nominated for the California Integrated Waste Management Board.

We now have a quorum. Senator Ayala, we now meet as a quorum and not as a subcommittee. We've been elevated from subcommittee status to full committee.

Do you want to make a statement? Well, we have Senator Craven.

MR. FRAZEE: Senator Craven is here on my behalf.

SENATOR CRAVEN: Thank you very much, Mr. Chairman and Senators.

I'm delighted to appear once again with a colleague that many of us shared, perhaps, the best part of two decades with, since he served with great distinction in the California Assembly.

I knew him long before that time. I knew him as a very, very dedicated citizen in his home town of Carlsbad, where he eventually was, I suppose, inveigled into running for public office as a Council person, to which he won -- from which he ran and won his seat. He then moved on to become the Mayor of that city.

I can recall when his term, I suppose, was ending, that he and I discussed the matter relative to running for the Assembly. And he did, and he won overwhelmingly. And he was elected, and re-elected, and re-elected during the years that he served with



us without any problem or effort whatsoever.

He is a person who has a background which is a little different than that which we may normally run into. He was in the flower growing business, as his family has been for years. And in that, he learned a great deal about business and the manner of conducting a business, which I think has served him well as an Assemblyman.

He was known as a very frugal gentleman. He probably was also known as a conservative, but I would hope to use that term in the nicest, more benign sort of a way.

He wasn't one who wears an arm band. It was just that feeling, based on his business experience and acumen, as to what we should do.

And he did well. And as a matter of fact, he was, I think, the only Member of his party ever to serve as chairman of two committees under the then-Speaker Willie Brown. Which I think probably, in one way or another, says a great deal. I think that it indicates to you that the powers that be in that House felt very, very confident in his ability. And secondarily, that they felt that he was one of them, not one of those people on the other side or this side.

He has been able to do that throughout his government career, and I suppose that's one of the reasons why he has so very many people who think so highly of him, and properly so.

I believe that the Governor, in choosing him for this particular task, has chosen both wisely and well. He, too, has remembered and known Bob for many, many years, as I have, and will look with great favor upon him.

1 And I would ask this august body to do the same thing, and  
2 I hope that you certainly will do that.

3 Thank you very much.

4 SENATOR PETRIS: Senator Craven, in all these impressive  
5 assignments that he's had as Mayor and so forth, do you think  
6 he's learned something about waste management to qualify him to  
7 go on this Board?

8 SENATOR CRAVEN: Well, he's told me a little bit about  
9 what he does, which is very, very intriguing, Senator Petris.

10 I think he knows a great deal, and I guess he learns every  
11 day, just as you and I do.

12 SENATOR PETRIS: Thank you.

13 Assemblyman Frazee, would you like to make an opening  
14 statement?

15 MR. FRAZEE: Thank you, Mr. Chairman.

16 There's an old saying that I learned when I was here in  
17 the Assembly, and I sometimes think about using as we hold  
18 hearings of the Waste Board and go on with some very lengthy  
19 meetings, and that is: do you want to talk or do you want your  
20 bill out?

21 And following Senator Craven, I feel that way today.  
22 Anything that I said now might be just extending the process  
23 here.

24 But I would like to comment on a few things.

25 As the Senator indicated, some 17 or 18 years ago, in  
26 1978, after about 25 years in business, I decided to embark upon  
27 public service as a full-time occupation. I ran for the State  
28 Assembly and was successful with that.

1           And then, this last term, even though it was one term  
2 short of term limit time, I felt that I had served far longer  
3 than I had originally intended, and that it was time for me to  
4 move along and do something else.

5           And in the appointment to the Integrated Waste Management  
6 Board, I found a new challenge. It gives me an opportunity to  
7 still be of public service, to occupy my time, hopefully, and to  
8 give back to my community and the state some of the benefits that  
9 I've enjoyed over the years.

10          The Integrated Waste Management Board, as you know, is  
11 charged with operating under one piece of legislation,  
12 specifically AB 939, that sets some rather ambitious goals for  
13 the people of the State of California, and that's to reduce the  
14 amount of waste going to landfills by 25 percent in the year just  
15 past, in 1995. California did achieve that goal. And then  
16 further, by the year 2000, to reduce waste going to a landfill by  
17 50 percent over 1990 levels.

18          That's a pretty ambitious program, but I think things are  
19 well under way. I have a great deal of confidence in the ability  
20 of the public and the private sector in California to meet those  
21 goals.

22          I find it interesting, fascinating, to be out and visiting  
23 both public and private operated facilities and see the amount of  
24 materials that's now being recycled, the markets that are being  
25 developed for recycled materials. And I think it's a challenge  
26 that California is meeting and has really become a leader in this  
27 nation in avoiding waste of materials that have an economic life  
28 left to them.



1 Without this opportunity to get out and see what's going  
2 on, I think the average citizen misses what there is out there in  
3 the way of material that can be recycled.

4 Just as a measure of how well this is working, the Chicago  
5 Board of Trade this year is opening a commodities market in  
6 discarded materials, if you will, in plastics, paper, a number of  
7 other commodities that are now available through an on-line  
8 process with the Chicago Board of Trade. And I think we can see  
9 in the short-range future that recycled materials will be a  
10 commodity that will be available for investment.

11 So, I'm tremendously encouraged at the progress that we're  
12 making with the agency and working with local governments. That,  
13 after all, is where I came from to begin with, so I'm enjoying  
14 that challenge.

15 SENATOR PETRIS: Did term limits apply to you?

16 MR. FRAZEE: No.

17 SENATOR PETRIS: That came in after?

18 MR. FRAZEE: No, they do not. I am serving out the  
19 remainder of a term that will end at the end of 1996.

20 SENATOR PETRIS: No, I mean apply to you if you ran for  
21 the Legislature.

22 MR. FRAZEE: Oh, if I ran for the Legislature?

23 SENATOR PETRIS: Are you eligible?

24 MR. FRAZEE: Yes, I have one term left in the Assembly I'm  
25 saving for the future.

26 [Laughter.]

27 SENATOR PETRIS: Well, the question is relevant, because  
28 we're talking about recycling.

[Laughter.]

SENATOR PETRIS: I gather you're a strong supporter of the statute, even though it may not be specifically related to us as Members.

You mentioned AB 939, which is our basic statute. I gather you're impressed by that statute, and you agree with its premise?

MR. FRAZEE: Yes. I did vote for it when it went through the Legislature. And even though it's not currently within our scope of practice, I also supported AB 2020, the Bottle Bill, recycling bill.

And I hope to see the day when all of that can be merged into a single agency so that we don't have this overlap of recycling efforts in two agencies.

SENATOR PETRIS: You just answered one of my questions.

Senator Ayala, do you have any questions?

SENATOR AYALA: Yes.

Did I hear you say that everything you know, you learned in the Assembly?

MR. FRAZEE: No, I did not.

SENATOR AYALA: You mentioned AB 939. Is it effective, in your opinion, or a failure?

MR. FRAZEE: I think it's been effective, specifically the goals of reduction.

There are those who are, I believe, ready to visit the 50 percent by the year 2000 goal. I'm not ready to do that.

There are certainly skeptics out there that don't believe that we can reach that --

1           SENATOR AYALA: We're making good headway into that target  
2 date?

3           MR. FRAZEE: And I think it's an achievable goal, as we  
4 see markets evolve.

5           A good example, I think, is in newsprint. There were  
6 times in recent history when Boy Scouts were out picking up  
7 newspaper, hopefully to make some money from it. And if they  
8 were lucky, they got \$10 or \$20 a ton for it. And a lot of  
9 newsprint, after being gathered, went to the landfills in the  
10 middle of the night that no one knew anything about.

11          Newsprint has been selling as high as \$220 a ton in recent  
12 months. And there are now regularly separated for recycling  
13 seven categories of used paper, all the way down to a category  
14 that's called "junk mail", and I think that's progress.

15          SENATOR PETRIS: Is that number one on the list?

16          MR. FRAZEE: No, I think that's number seven.

17          SENATOR AYALA: Do you think that wine and liquor bottles  
18 should be added to the materials subject to the Bottle Bill?

19          MR. FRAZEE: That, of course, is not, as I mentioned, not  
20 within our jurisdiction.

21          If I were still in the Assembly, I probably would not vote  
22 to do that.

23          SENATOR AYALA: I don't have any more questions, other  
24 than to question the gentleman who introduced him, that's all.

25          SENATOR PETRIS: Well, we're going to give him the floor,  
26 too.

27          SENATOR CRAVEN: May I?

28          SENATOR PETRIS: Yes.



1           SENATOR CRAVEN: I know that you have a burning question  
2 that you have not advanced to this time.

3           But to save you the time of so doing, let me say that the  
4 gentleman to my left is also, like yourself, a United States  
5 Marine.

6           SENATOR AYALA: Oh, I'll move the nomination.

7           SENATOR PETRIS: Ayala moves approval.

8                               [Laughter.]

9           SENATOR CRAVEN: I'm sorry to have waited so long.

10          SENATOR PETRIS: Senator Lewis.

11          SENATOR LEWIS: Mr. Chairman, I think I'm the only Senator  
12 here today that had the opportunity to serve with Assembly Frazee  
13 in the other House.

14          We agreed almost all of the time, but not, of course, not  
15 all of the time.

16          But I have a tremendous respect for Bob Frazee's ability,  
17 and it would be my great honor to move his confirmation.

18          SENATOR PETRIS: Okay, we have a motion.

19          Is there anyone here who would like to testify either in  
20 support or in opposition?

21          We have a motion. Let's call the roll.

22          SECRETARY WEBB: Senator Ayala.

23          SENATOR AYALA: Aye.

24          SECRETARY WEBB: Ayala Aye. Senator Lewis.

25          SENATOR LEWIS: Aye.

26          SECRETARY WEBB: Lewis Aye. Senator Petris.

27          SENATOR PETRIS: Aye.

28          SECRETARY WEBB: Petris Aye. Senator Beverly. Senator

1 Lockyer.

2 SENATOR PETRIS: It's three-zero. We'll move a call to  
3 give the others an opportunity. I'm sure they want to be  
4 recorded.

5 Good luck, congratulations.

6 MR. FRAZEE: Thank you very much.

7 SENATOR PETRIS: Thanks to Senator Craven for his  
8 sponsorship.

9 SENATOR CRAVEN: Thank you, my pleasure.

10 SENATOR PETRIS: Next we have Mr. Huff.

11 Mr. Huff, welcome back to the Capitol. It's nice to see  
12 you.

13 MR. HUFF: Thank you, Senator.

14 SENATOR PETRIS: We'll ask Senator Calderon to introduce  
15 you, then ask for comment.

16 SENATOR CALDERON: Thank you, Mr. Chairman.

17 Certainly this individual needs no introduction to Members  
18 of this Committee. You probably have had your own experience in  
19 terms of working with Mr. Huff, and I think on balance you would  
20 find that it was a pleasurable experience in terms of his  
21 knowledge and his professionalism.

22 He comes to this Committee with more than adequate  
23 qualifications to serve in this capacity. As many of you know,  
24 he was the Director of the Department of Finance under the  
25 Deukmejian administration from 1980 to 1984, and previous to  
26 that, he was the Chief Deputy Director, Department of Finance.

27 He then was appointed President of the Integrated Waste  
28 Management Board, where he served for a year, a little over a

1 year, and then was asked by Governor Wilson to assume the  
2 directorship for the Department of Toxics Substances Control.

3 I think that Mr. Huff is eminently qualified for this  
4 position, but I'm here because I've had the opportunity to work  
5 with him, not only in previous years when I was in the Assembly,  
6 but certainly when I was Chair of the Toxics Committee here in  
7 the Senate. I had occasion to work with the Department of Toxics  
8 for three years.

9 And it was quite frustrating under the previous director  
10 because they had absolutely no experience in terms of estimating  
11 the financial condition of the Department. And so, every budget  
12 year, we would get different numbers in terms of what their  
13 budget situation was. They would estimate that they were \$2  
14 million in deficit; by the end of -- by July, that number would  
15 jump to \$14 million, and by the time the budget was voted on, we  
16 found that they had over \$2 million surplus.

17 This was consistent in the Department, and anyone working  
18 with the Department for any length of time as I did would know  
19 that they had serious problems and they were in serious disarray.

20 That has subsided significantly under Mr. Huff's  
21 administration. Information is forthcoming to the Legislature.  
22 He answers the questions directly. His numbers make sense, and  
23 he doesn't hide, no matter what the facts are.

24 And I think that's to his credit, and I think that stems  
25 from his experience in dealing with the Legislature and his  
26 experience dealing in public life. He's used to providing public  
27 information in full view under the watchful eye of the public.  
28 He did so as President of the Integrated Waste Management Board.



1 And I think he brings that kind of tradition with him to  
2 this particular position. I think he is eminently qualified.

3 There are still problems in the Department. I don't  
4 expect even Mr. Huff to be able to solve all of them in one year,  
5 but he has come a long way and will continue, I think, to be  
6 responsive in terms of working together with the Legislature to  
7 accomplish the people's work.

8 I recommend him highly, not only because I know him and  
9 happen to like him as an individual, even though I can think of  
10 many times in the Assembly when that might not have been the case  
11 for a couple of months. But as an individual, he's honest. He  
12 has a lot of integrity, and he's willing to work and get down to  
13 business and get the job done.

14 So, I was quite honored when he asked me to recommend him  
15 to this Committee, and so I do so with the highest  
16 recommendation.

17 SENATOR PETRIS: Thank you.

18 Any questions of the Senator?

19 If not, is there anyone in the audience who desires to  
20 speak? All right, come forward, those in support.

21 You can make notes and comment after.

22 SENATOR CALDERON: If I may be excused, Mr. Chairman.

23 SENATOR PETRIS: Yes, sir.

24 SENATOR CALDERON: Thank you.

25 MR. WEINER: Mr. Chairman, Members of the Committee, thank  
26 you.

27 My name is Peter Weiner from the law firm of Heller,  
28 Ehrman, White and McAuliffe in San Francisco.

1 I've been involved in one way or another, both inside the  
2 executive branch and in private practice with the Department and  
3 its predecessor since 1979. And I've have frequent contact with  
4 the Department over that period.

5 The problems that this program and as a department, the  
6 Department has had in the past has been a lack of fiscal skill  
7 and understanding, which, as you know, Mr. Huff remedies by his  
8 mere presence, but also substantially problems with management.

9 And I'm very pleased to say that from my perspective,  
10 Mr. Huff has brought strong managerial skills to the Department.  
11 I think, in retrospect, that his tenure as Director of the  
12 Department of Finance prepared him for how to be a Director, and  
13 his tenure as Chairman of the Waste Management Board enabled him  
14 to develop further skills in achieving consensus.

15 But in both cases, he has integrated Department programs.  
16 He has restored a focus to core programs that at times was  
17 missing under previous leadership, and has given the Department  
18 firm direction.

19 At a time when the Department itself has sometimes been  
20 involved in controversial programs, some of which I've  
21 occasionally disagreed with, what has been clear is that everyone  
22 in the Department understands what the direction is, and that in  
23 and of itself is a major achievement.

24 Moreover, the Department has finally come to grips with  
25 implementation of the California Environmental Quality Act in a  
26 competent and assertive way.

27 As of 1993, the Department had done, I believe, two EIRs,  
28 and was historically in the practice of issuing negative

1 declarations.

2 The Department at this time, as I understand it, is  
3 involved in 15 separate Environmental Impact Reports. I myself  
4 have been involved in some. And as time has gone on, it has been  
5 apparent that Mr. Huff has insisted on institutional competence,  
6 and that that competence is now holding sway.

7 So, I think there may have been some past mistakes on  
8 implementation of CEQA at the Department that were initiated  
9 prior to Mr. Huff's arrival, but the record has been a very  
10 vastly improving one, and today it is quite competent in  
11 implementing that very important statute.

12 For all these reasons, I believe that Mr. Huff's  
13 leadership has been an important one. He also is very sure of  
14 his mandate in protecting human health and the environment as he  
15 goes forward with needed regulatory reforms. I'm sometimes,  
16 frankly, opposed to some of those reforms and believe the current  
17 regulations should be maintained.

18 But in all events, what is clear is that the Department  
19 has been thoughtful and open in the process. They've invited  
20 everyone to participate, and have frankly been open in substance  
21 as well as in process in considering what to do, because this is  
22 an area where some reforms are needed and some may not be.

23 But Mr. Huff, in presiding over this, has been the very  
24 model of a person who understands that his job is to enforce the  
25 mandates that he's been given by the Legislature.

26 So, in closing, I don't want to take too much time,  
27 either, but I realize there are many who will come after me, and  
28 this is my chance.



1 I'd like to strongly support Mr. Huff's confirmation  
2 before this body.

3 Thank you.

4 SENATOR PETRIS: Thank you.

5 MR. APREA: Mr. Chairman, Members of the Committee, I'm  
6 Marc Aprea. I'm representing Browning-Ferris Industries. We're  
7 a solid waste and medical waste collection, treatment and  
8 disposal firm.

9 And I've come to know Mr. Huff in the four to four and a  
10 half years that he served as a member and later as Chair of the  
11 California Integrated Waste Management Board. And it is with a  
12 great deal of pleasure and no reservation that I urge you to  
13 confirm his appointment.

14 Mr. Huff, I believe, and I think it is the belief of  
15 everyone in our company, represents the best in public service.  
16 He is open to listening to all points of view. He has an  
17 extremely high level of integrity. He is an insightful and, most  
18 important of all, he's a problem solver. He does not come to  
19 issues with a predetermined position, nor does he respond to  
20 problems or issues in a dogmatic fashion. Rather, he has always  
21 taken it as his duty as one to implement and enforce the law as  
22 the Legislature, you and your colleagues, draft it.

23 And so, it is with a great deal of pleasure, again, that I  
24 would support his confirmation.

25 And if there are any questions, I'd be happy to respond to  
26 any of them.

27 Thank you.

28 SENATOR PETRIS: Any others?

1 Any opposition? Do you want to come forward?

2 MR. SHABAZZ: Mr. Chairman, Members of the Committee, my  
3 name is Rahman Shabazz, and I am President of the Community  
4 Coalition for Change, which is a grassroots organization that was  
5 formed in South Central Los Angeles.

6 And I'm here this evening representing those  
7 African-Americans and Latino-Americans who reside in South  
8 Central that don't have the financial means to be here to speak  
9 on behalf of themselves today.

10 I have a short letter here that I'd like to read to help  
11 frame my discussion and opposition of Mr. Huff's confirmation as  
12 Director of the Department of Toxic Substances Control. It  
13 reads:

14 "As an African-American resident of  
15 South Central Los Angeles, I feel that  
16 under the leadership of Mr. Huff, far too  
17 little consideration is given to a  
18 disproportionate number of toxic waste  
19 transfer and treatment facilities located  
20 in communities where residents are people  
21 of color.

22 "In August, 1995, a study was  
23 released by Jim Sadd, Professor at  
24 Occidental College, which concluded that  
25 minorities in Los Angeles County are  
26 three times more likely than Whites to  
27 live within a half mile of a facility of  
28 this type. The study also concluded that

1 race was even more significant than  
2 income in determining where the facility  
3 would be placed.

4 "In the community where I reside, a  
5 toxic waste storage and treatment  
6 facility has been operating under an  
7 interim status permit since 1990, and  
8 it's currently seeking to obtain a  
9 permanent permit to operate.

10 "However, this facility has an  
11 extensive history of hazardous waste law  
12 violations. The facility has been fined  
13 several times. There have been fires,  
14 explosions, and nearby residents have  
15 been hospitalized.

16 "The most recent incident of this  
17 type happened on August 18th of 1995,  
18 when two incompatible materials caused a  
19 chemical reaction which sent billowing  
20 clouds of gas into the community.

21 "The community has struggled since  
22 1994 to block the approval of the  
23 permanent permit for this facility to  
24 operate, based on the facility's  
25 operating record and its close proximity  
26 to the residential community. Despite  
27 the risk of locating a hazardous waste  
28 facility in a residential community, the



1 Department of Toxics Substances Control,  
2 in the permitting process, continues to  
3 move forward.

4 "I feel that because the community  
5 where this facility is located is one  
6 where the residents are people of color,  
7 the level of concern is not the same. I  
8 feel that a different standard is being  
9 used in the licensing process, and that  
10 standard, as evidenced by the report by  
11 Professor Sadd, is based on nothing more  
12 than race.

13 "Finally, I feel that the attitude  
14 and the philosophy of the Director are  
15 generally reflected in the practices of  
16 the Department. Therefore, based on the  
17 discriminatory practice of DTSC, I  
18 strongly oppose the confirmation of Mr.  
19 Huff as Director."

20 Now, I have resided in this community where I live for  
21 approximately 40 years. And there are a number of things that  
22 are problematic in running any type of an agency of that size.  
23 And I understand that a lot of the things that were going wrong  
24 with the Department, Mr. Huff inherited as he became Director.

25 But nonetheless, I haven't seen any activity on his part  
26 to neutralize or to put in place any type of a policy that would  
27 correct this environmental racist imbalance in terms of how these  
28 facilities are licensed, and how they're placed in these

1 communities where the people are predominantly those of color.

2 My wife -- we talk about human health and environment --  
3 my wife is pregnant. And we live within a half a mile of this  
4 facility. I am fearful for my unborn child's health.

5 Not only that, the residents of this particular facility  
6 -- let me say that this facility, the wall of this facility is  
7 adjacent to a trailer park. And the closest home to this  
8 particular trailer park from this facility is about 10 feet.  
9 It's about a 10-foot distance.

10 And in the process of doing what they do, in transferring  
11 chemicals from one container to another, fumes, particles, become  
12 airborne. They fly over the wall.

13 There are children that play in this community, in this  
14 trailer park right next door. Their backyard is literally right  
15 next to this facility.

16 I mean, it shouldn't be there.

17 We have appealed to the Department of Toxics Substances  
18 Control, but all of our complaints fall on deaf ears. But our  
19 complaints are not just allegations without base.

20 We have records where the facility has violated  
21 environmental laws. They have been fined for not following the  
22 law, and still, even though that -- even though they're not in  
23 compliance with their interim -- with the conditions of their  
24 interim status permit, the Department moves forward with the  
25 licensing process.

26 There are a lot of things here that I could touch on, but  
27 in the interests of time, I'm going to stop because there are  
28 some other people that came that want to make some comments as

1 well.

2 I would invite Mr. Huff to come out and see the facility,  
3 and see the close proximity of the residents and the people, and  
4 how the people live right next to this facility.

5 I mean, a lot of these people are non-English speaking.  
6 They are undocumented individuals who fear to speak out in their  
7 own behalf for fear of deportation.

8 But just because they are undocumented, you know -- not  
9 illegal aliens. They're not from Mars; you know, they're not  
10 from outer space -- they're undocumented individuals who have  
11 come into this country illegally, but that in itself is not  
12 reason for them to be -- have to live under these conditions,  
13 where their health and their safety is jeopardized on a daily  
14 basis.

15 In 1991, there was an explosion at this facility, and  
16 people in the community had to be hospitalized.

17 This facility has been fined numerous times for storing  
18 materials too close to the walls. Well, close to the wall is  
19 right next to a trailer park where somebody lives.

20 I asked Mr. Huff to come out and see this, you know. He  
21 has to see it.

22 And when we talk about, you know, public health or human  
23 health, and environmental justice, it's hard for me to see that  
24 what has taken place in the community where I live is actually --  
25 it's not true. It's just not true.

26 The person that came before me said that he comes up with  
27 great pleasure, and without reservation; that he would, you know,  
28 offer Mr. Huff as a candidate and would like him to be confirmed.



1 And with the same pleasure, and with the same lack of  
2 reservation, I feel that the way the Department's being run now,  
3 with the lack of regard for the people of color in their  
4 permitting process, with the same lack of reservation I would  
5 recommend that he not be confirmed.

6 That's all.

7 SENATOR PETRIS: Mr. Shabazz, I have a question.

8 When a site is chosen for that kind of facility, such as  
9 in your community, are there any public hearings prior?

10 MR. SHABAZZ: There was a public hearing, yes.

11 Funny thing, I wanted to stop.

12 There are letters that are sent out, and the letters are  
13 sent out not to every home, but maybe -- I don't know exactly  
14 what the process is, but they try to canvass the general area  
15 that's going to be most affected so that they can come out, and  
16 so that they can speak on it.

17 But in that process, in this particular facility that I'm  
18 talking about, when most of the people in my community became  
19 aware of it, and this was in approximately February-March of '94,  
20 and we became aware that this facility was pursuing a permanent  
21 permit to operate, we came together and we spoke amongst  
22 ourselves.

23 You know, I didn't know that it had -- no one knew that  
24 the facility was there actually conducting the type of business  
25 that it was doing. And in addition, no one knew that it had an  
26 interim status permit.

27 What I'm saying is that the process of making people aware  
28 of what is taking place is not the best way. I mean, there's

1 fault. It's fallen through the cracks; it's not working.

2 A lot of times, people in the community where I reside,  
3 they receive letters or notices, and they'll throw them away, and  
4 they won't act on them. And when they don't act on those  
5 letters, naturally, when the meeting is held, it's written down  
6 or it's recorded that nobody showed up, nobody's concerned, okay.

7 So, because nobody showed up, nobody's concerned, we'll go  
8 on with our plan, because there's no opposition.

9 And that's a sad scenario; that's a sad reality.

10 But even though no one shows up, still, to license a  
11 facility of this type that is dangerous to the health of the  
12 residents, and especially in such a close proximity as this one  
13 is to this community, is wrong, is wrong.

14 There were letters that were circulated, yes. Everyone  
15 did not get the letter, but the few of us that did get them made  
16 our own posters, and that's how the Coalition was formed. We,  
17 you know, we canvassed our community, and a number of people  
18 didn't get them. So, we made out our own flyers, and we  
19 circulated our own flyers to alert people and make them aware  
20 that this meeting was taking place, and to mobilize the community  
21 and get everybody involved.

22 SENATOR PETRIS: You know, it brings up an interesting  
23 point.

24 We hear a very common criticism that the permit process in  
25 so many endeavors is far too cumbersome, strung out, and  
26 oppressive. Too many agencies have a role to play.

27 It seems to me in that kind of a context that you  
28 described, the Health Department should have been in that

1 process, both County and State. And it seems to me that the  
2 State in particular, since it's a state agency, at least operates  
3 under our license and so forth, should be the first to check out  
4 the health consequences for the immediate neighborhood.

5 That doesn't seem to be the case. Maybe Mr. Huff can  
6 comment on that when it's his turn.

7 Any questions of the witness? Senator Ayala.

8 SENATOR AYALA: I'd like to ask Mr. Huff a question.

9 As Director of the Toxics Substances Control Agency, what  
10 is your responsibility as it pertains to toxic waste dump sites?

11 MR. HUFF: Certainly, Senator.

12 Responsibility is to protect human health and the  
13 environment from hazardous substances and hazardous wastes. We  
14 employ a number of scientists to ensure that that happens.

15 In our permit process, it is that requirement, to protect  
16 human health, that we hold highest. The law requires us to first  
17 of all protect sensitive populations: senior citizens --

18 SENATOR AYALA: Since you've been Director, have any new  
19 dump sites been developed?

20 MR. HUFF: To my knowledge, I do not believe so.

21 We have a number of sites who are operating under old  
22 permits. This site, for example, is operating as interim status.  
23 It was grandfathered in. When the laws were originally passed,  
24 it received its permit as a result of being grandfathered in.

25 It has received a land use permit from the County of Los  
26 Angeles. In 1988, I believe, was the land use permit.

27 And Mr. Shabazz is correct. It was spot zoned, heavy  
28 industrial. It abuts commercial property on one side and



1 residential on another. So, the zoning, if you looked at a map  
2 of the zoning --

3 SENATOR AYALA: Which came first, the residential areas or  
4 the dump site?

5 MR. HUFF: I suspect the residential areas have been there  
6 for sometime in South Central.

7 SENATOR AYALA: We do have a responsibility to protect  
8 those areas where we come in with a dump site that could be  
9 dangerous to their health.

10 MR. HUFF: We certainly have a responsibility. We've been  
11 on that site many times with inspections.

12 Mr. Shabazz mentioned that there have been violations  
13 found. It's been my Department that has found them. That there  
14 were fines levied; it has been my Department that has levied  
15 those fines.

16 We're faced with a situation here where we have a site  
17 that has a land use permit, and I think that this begins as a  
18 land use question: is it an appropriate land use for this  
19 community, for this neighborhood, to have this facility there?

20 The land use decision, the land use authority, as you  
21 know, Senator, is local.

22 SENATOR AYALA: We have funds from the Superfund  
23 available, do we not?

24 MR. HUFF: It's not a dump site in that sense. It's not  
25 -- it's an operating site. It is a business. It is a business  
26 that handles hazardous materials.

27 One of the materials -- in fact, I believe the material  
28 that caused the explosion referenced in August of last year, was

1 titanium. They handle titanium shavings from industries in  
2 Southern California.

3 SENATOR AYALA: Have you been on the site he's concerned  
4 with?

5 MR. HUFF: I have not personally yet been there, but I  
6 intend to take him up on his invitation.

7 I spoke with Mr. Shabazz in the moments that we had before  
8 the Committee hearing --

9 SENATOR AYALA: Do you have other complaints from other  
10 dump sites? Of course you do.

11 MR. HUFF: Yes.

12 SENATOR AYALA: All over the state.

13 MR. HUFF: All over the state. Many of them relate to  
14 their operations, as do some of these complaints, but many of  
15 them also relate to a zoning decision over which my Department  
16 has not authority.

17 MR. SHABAZZ: Senator Petris, if I could, you asked me  
18 about -- my biggest problem here is the fact that I really feel  
19 that there's a double standard in how the licensing process moves  
20 forward in communities where there are people of color than it  
21 does in White communities.

22 Now, as for instance, as this process moves forward, the  
23 State orders an Environmental Impact Report to be done as part of  
24 that permitting process. So, a scoping hearing is held in  
25 October of last year, and letters are sent out to residents in  
26 the community. And again, we had to -- those of us that received  
27 letters -- had to make flyers to make sure that the word is out  
28 so that a lot of people, or a number of people, would show up.

1 But anyway, at that hearing that was scheduled for October  
2 5th, the local representatives of DTSC, who were left with the  
3 responsibility of handling that meeting -- I showed up there  
4 bright and early. The meeting was supposed to be at 10:00; I get  
5 there about 9:30.

6 And when I show up, they're not prepared. The facility  
7 where the meeting was supposed to be held is not prepared. They  
8 don't have a public address system. I have to get in my truck,  
9 and I have to go home and get my public address system to help  
10 facilitate, you know, communication to the group, and that's not  
11 my job.

12 But if that meeting was being held for residents of  
13 Beverly Hills, the State would have acted in a more responsible  
14 way.

15 I'm saying that the level of accountability and the level  
16 of sensitivity that is given to the residents in the community  
17 where I live is very low, if any at all. And that is just an  
18 example.

19 Further, in that same meeting, which was called for the  
20 purpose of the residents of the community, coming and voicing  
21 their input in terms of what issues, what environmental issues  
22 they feel need to be looked at in that impact report, that was  
23 the purpose of the meeting.

24 But the owner of the facility comes in with 10, 15 of his  
25 employees, and the primary time is given to the employees, coming  
26 up one after another, talking about how great a man he is, and  
27 how wonderful an operation it is, and how terrible we are as  
28 residents for coming here and making accusations that -- half of



1 the people that did come, that took off that Saturday morning  
2 from their household responsibilities to come for this meeting,  
3 they became so upset that they left.

4 This is lack of responsibility on the part of the State.  
5 And I believe that this is an attitude, you know, that comes down  
6 from the Director to the local authorities, or those people who  
7 are locally in charge, because if the attitude from the head  
8 said, you know, "I want you to implement a more stringent  
9 attitude in terms of trying to reverse some of these  
10 environmental injustices in these communities," they would have  
11 been more diligent in the way that they handled their job down  
12 there, and they weren't.

13 So, that's just another example of how I feel that there's  
14 a double standard, and there's this lack of respect where these  
15 facilities are being licensed or permitted in areas where there  
16 are people of color.

17 SENATOR PETRIS: How long has this policy been going on?

18 Mr. Huff is just a newly appointed person. How about the  
19 last five years, or ten years?

20 MR. SHABAZZ: You know, there's this saying that I have:  
21 the only thing that has to -- all that needs to happen in order  
22 for evil to prevail is for good people to sit back and do  
23 nothing.

24 So now, if this policy was in place, whether it was  
25 written or just known, and he came in and took that position as  
26 Director, if he becomes aware that a certain practice is in  
27 place, as Director he should be moving to rectify that.

28 So, I don't care what has taken place prior to his coming,

1 because, yes, this attitude was there. But what has he done to  
2 rectify that? I don't see any evidence of that, and that's what  
3 I'm saying.

4 SENATOR PETRIS: Well, your quotation is very familiar to  
5 me, since it comes from --

6 MR. SHABAZZ: Excuse me?

7 SENATOR PETRIS: The quotation you used is very sound,  
8 very familiar to me. I think it comes from Plato or Aristotle,  
9 one of the two. It goes way, way back.

10 Any other questions from other Members of this witness?

11 Thank you very much.

12 Are there any others who desire to testify?

13 MR. BUSFIELD: Good afternoon. My name is Tom Busfield.  
14 I live at 720 Primrose Lane in Benicia, California.

15 I am the Chairman of Rose Drive Community Action  
16 Committee; initials are RDCAC. It is a group of affected  
17 residents serving as watchdogs over the responsible parties and  
18 government agencies regarding a waste site in our community.  
19 It's sometimes called Braitto Landfill Committee -- or, Braitto  
20 Landfill, I should say -- and it's also called Solano County  
21 Sanitary Landfill. There are several names for it.

22 We've been doing this -- basically, this group has been  
23 formed since the summer of 1991, so it's been going on for almost  
24 four and a half years now.

25 Benicia, California, which is right next to Vallejo, for  
26 those of you who don't, maybe, know where it is, a small town of  
27 about 28,000 people. Half of this town live in South Hampton  
28 homes, so the responsible parties, which I'll identify in a

1 second, are essentially living in half of a community built by  
2 the developer that we have a problem with.

3 The responsible parties, South Hampton Company is owned by  
4 a company called ALMA Associates out of Menlo Park. They were in  
5 financial partnership with First Nationwide Bank, who is owned by  
6 Ford Motor Company.

7 Banking interests of First Nationwide Bank were sold off,  
8 leaving a real estate division that no one wanted, essentially,  
9 and that company is called Granite Savings Bank, and  
10 metamorphosized into Granite Management Corporation, who is the  
11 named responsible party at this point in time.

12 First Nationwide and Granite actually own a lot of the  
13 affected property that we're having to live around, or in some  
14 cases, on top of.

15 The situation is that we've got a privately owned dump  
16 site, from a historical standpoint, with numerous burn sites  
17 within this dump site. It's on the western extreme of town, and  
18 it operated essentially from the mid '50s through the late '70s.  
19 It was a Class II dump that accepted Class I wastes; essentially  
20 tannery and refinery wastes are the most hazardous materials that  
21 we're finding on the property.

22 South Hampton and First Nationwide Bank bought the  
23 problem, did a terrible job with cleaning up the site, which is  
24 what they were supposed to have done. Ended up building homes in  
25 and around the remaining hazardous wastes, some of which were  
26 moved and buried illegally, actually, by these people, by the  
27 responsible parties.

28 Regional Water Quality Control Board was the governing



1 agency at that point in time when this dump site was supposedly  
2 closed.

3 We're dealing with about 56 toxic substances, 22 of which  
4 are known carcinogens; 6 of those are in excess quantities, plus  
5 dioxin because of the burn sites that we have in our  
6 neighborhood. Many of these wastes are about 20-30 feet below  
7 the surface, but in many cases also, they're within 2-3 feet of  
8 the surface.

9 We're dealing with heavy metals, methane with trailing  
10 carcinogenic gases. We're concerned about our drinking water,  
11 since we're dealing with PVC pipes coming into our homes. Any  
12 contact with PVC pipes with certain hazardous materials will  
13 penetrate those pipes.

14 Groundwater is coming up mostly clean because of the  
15 dilution of the many underground streams in the area. But we do  
16 have 9 separate and distinct hazardous waste sites in our  
17 community. It's a single home community of about quarter of a  
18 million dollar homes, so we're dealing with an upper middle-class  
19 neighborhood.

20 Health impacts, we've had at least three deaths in our  
21 community, two from leukemia, one from cancer. Breast and  
22 testicular cancer, immune system problems, endometriosis,  
23 possibility of lead poisoning. We have a child with spots on his  
24 brain that no one quite knows where they came from, and we are  
25 aware of the difficulty of linking some of these health affects  
26 with what was under the ground and where we live.

27 In some cases, in my case, I've lived there for 10 years,  
28 with four children.

1           What we have been told is that we don't have short-term  
2 risks in where we live; meaning that if any of you folks came and  
3 visited my house or any of the houses in the neighborhood, you  
4 wouldn't have to be concerned for your health. But we are left,  
5 for the last four and a half years, wondering about our long-term  
6 health risks. We have no answers, and unfortunately probably  
7 will never have answers on those particular questions.

8           We do have litigation which is complicating our situation.  
9 There's approximately 300 plaintiffs against the responsible  
10 parties, representing about 75 households. We have a trial date,  
11 thank God, at summer of '96. Hopefully we get some type of  
12 resolution.

13           We have responsible parties that are spending about a  
14 million dollars a month on their defense. They've got numerous  
15 teams of attorneys, including Waithe and Watkins, who essentially  
16 cut their teeth on Stringfellow, and consultants paid to say and  
17 do what the attorneys tell them to do.

18           The problem essentially is that we have responsible  
19 parties that are in charge of investigating their own misdeeds,  
20 even though their whole legal defense rests on the argument that  
21 no hazardous wastes exist in the affected area, only chemically  
22 affected soils, which is how they refer to it as.

23           These people have established a "no problem" scenario up  
24 front; have proceeded to attempt to support that conclusion  
25 throughout the investigation.

26           In the face of intense pressure to clean up the site, and  
27 absorbing some of the blame for spending four and a half years  
28 with not much to show, and up against a responsible party that

1 won't produce anything that could be used against him in a court  
2 of law, DTSC is compromising the community's health and safety  
3 concerns in order to move forward with the cleanup.

4 We have two additional presentations that will follow me,  
5 and at least one of those will get into some details of some  
6 situations where we've been having to deal with.

7 As far as Mr. Huff is concerned, you know, the direct, I  
8 guess, problem I would have with Mr. Huff's appointment revolves  
9 on a direct basis, anyway, revolves around the mission statement  
10 which I think he just referred to in the last presentation. And  
11 unless I'm wrong, the mission statement went from what Mr. Huff  
12 was quoted as saying, which was "improve environmental quality to  
13 protect public health, the welfare of our citizens, and  
14 California's natural resources." It went from that to, "protect  
15 public health and the environment from harmful exposure to  
16 hazardous substances without unnecessarily impacting sustainable  
17 growth and development."

18 As far as I know, the mission statement was changed about  
19 November at Mr. Huff's behest. And as far as I'm concerned, as  
20 an affected resident, my question that I've already posed to the  
21 agency is whether that mission statement is retroactive or not.  
22 It's a very nebulous statement that leaves a lot of open holes  
23 within which anyone can operate, and I'd certainly want to be  
24 under the former rather than the latter mission statement, to be  
25 quite honest with you.

26 Beyond that, most of my concerns and my problems revolve  
27 around two appointees of Mr. Huff. And as a result, Mr. Huff, I  
28 think, is -- must be held accountable, I think, for the



1 appointees. It's Mr. Blais and Mr. Ryan. These people are now  
2 calling the shots, and things are definitely going down hill,  
3 unfortunately.

4 When we first started out with this process, we had a  
5 Project Manager, and then the geologist and engineers that fell  
6 underneath that Project Manager. We now have about four layers  
7 of management, and a lot of the decisions are being buried within  
8 that management structure.

9 And at the same time, the lines are blurring between the  
10 responsible parties and the government agencies. And that should  
11 not exist, and obviously causes a lot of problems.

12 The agency is, again, at the direction of our new  
13 management structure here, is allowing intentionally bad  
14 information to be collected, and then attempting to pass it off  
15 as being valid.

16 We're signing a CEQA document while knowing full well it  
17 contains false information. We're revising workplans, and  
18 they're not being distributed, yet requiring public comments  
19 within three days of their report's submittal.

20 All of these reports we are watching very carefully,  
21 because our children's health revolves around these particular  
22 reports, unfortunately.

23 We're making some precedence within the last couple of  
24 months that are extremely disturbing. We're getting verbal  
25 comments on a lot of reports from other reporting agencies, OEHHA  
26 in particular, only getting verbal comments on some of these  
27 reports that are due, and unfortunately, we want to see something  
28 than just verbal comments. We would like to be able to be

1 assured that what is being implemented in some of these workplans  
2 is correct and has the oversight of all the agencies involved.

3 We're using composite sampling, which has previously been  
4 banned from our situation. Composite sampling, from our  
5 standpoint, is -- dilution is the solution to pollution. And  
6 unfortunately, that is being used back again, once again. It's  
7 appearing in our situation, and it's being justified. And there  
8 is no justification for that.

9 Right now, we're in an expeditious process or mode. We're  
10 expediting a process that, in the last six months -- excuse me.  
11 We're expediting a process in the last six months before trial  
12 while the investigation sat stagnant for four and a half years.  
13 Responsible parties have stonewalled the process, and now want to  
14 ram it through quickly without exposing anything that might  
15 incriminate them. And unfortunately, our government agencies,  
16 DTSC, is accommodating them.

17 We're ignoring health and safety issues in order to  
18 achieve, at best, a partial cleanup. The agencies seem to be  
19 willing to absorb the blame for the ineptness and bureaucratic  
20 delays over the last four and a half years. And they are  
21 covering for the responsible parties, and I would like to know  
22 why that is happening.

23 We have a circular process, unfortunately. And we're  
24 allowing it.

25 We have concerns about health issues not being issued to  
26 the current residents because they didn't have -- and the  
27 explanation is that there was not a PEA that acknowledged the  
28 problem, a preliminary endangerment assessment. But such a

1 statement will never come out from the responsible parties for  
2 the reasons stated earlier. Therefore, no warnings and continued  
3 potential exposure.

4 We've had seven project managers in the last four and a  
5 half years. That constant revolving door of project managers  
6 equals a loss of institutional memory and a new learning curve  
7 from our standpoint that the responsible parties are taking full  
8 advantage of.

9 We are seeing our toxicologist stifled by making her  
10 essentially a half person from a time standpoint. Again, our  
11 major concerns are health and safety. We want that toxicologist  
12 to be a full term person -- full time person.

13 She's also being censured within her correspondence.  
14 She's being prevented from any direct phone call conversations,  
15 and we have actual concerns that she is being replaced without  
16 our knowledge.

17 All of this work -- all of this happening with our  
18 toxicologist at the time that the responsible parties are putting  
19 out a health risk assessment. That concerns us tremendously.

20 We have field notes that have been presented through the  
21 litigation process from the responsible parties' geologists.  
22 There have been no analysis in any way, shape or form of those  
23 field notes. It's -- it's incredible.

24 We have no EIR geologists. There have been no analyses in  
25 any way, shape or form of those field notes. It's -- it's  
26 incredible.

27 We have no Environmental Impact Report. It's a year  
28 process in and of itself. We've been in this situation for four



1 and a half years. We have not even started an EIR.

2 We've found dioxin, testing through our own consultants.  
3 There is no plan that I'm aware of on the part of the agencies to  
4 require the responsible parties to further test for dioxin.

5 We have a situation where the responsible parties have  
6 their public relations firm interacting with DTSC. These people  
7 come out of Washington, D.C., and it would not surprise me if  
8 we're dealing directly with a lobbyist. You know, with the  
9 responsible parties I mentioned, we are certainly dealing with  
10 both the banking industry and the real estate industry.

11 Unfortunately, my community is not up against any small  
12 people in any way, shape or form.

13 We've also -- our situation is within the 2061 process,  
14 and as far as I'm concerned, it's headed for the SB 923 process,  
15 all of which expedites the process even further. And again, what  
16 we are concerned about is expediting, yes, but not at the cost of  
17 health and safety.

18 I would formally request a Senate oversight hearing if at  
19 all possible, and a further investigation into Mr. Huff's running  
20 of this agency before confirmation is granted.

21 CHAIRMAN LOCKYER: Thank you, Mr. Busfield.

22 Let me ask, what's our time? When does the year run on  
23 you, Mr. Huff?

24 MS. MICHEL: February 7th.

25 CHAIRMAN LOCKYER: So, we only have a couple of weeks. If  
26 there were to be any delay or further inquiry made, there's a  
27 time problem.

28 I'm sorry, I had to be at another meeting, so I've come in

1 the middle of things here.

2 Mr. Huff, did you wish to respond to any of the comments  
3 from Mr. Busfield, or how do you prefer to answer any of the  
4 specific concerns he's raised?

5 MR. HUFF: Well, at the pleasure of the Committee, I  
6 understand from Mr. Busfield, whom I met, again, in the time  
7 before the Committee meeting for the first time, he indicated, I  
8 believe, that he had two other people who are also willing and  
9 desirous of making statements on this situation.

10 CHAIRMAN LOCKYER: Yes, there are, yes.

11 MR. HUFF: I don't know whether --

12 CHAIRMAN LOCKYER: Are they on the same issue?

13 MR. BUSFIELD: They're separate groups within our  
14 community.

15 CHAIRMAN LOCKYER: But in the same --

16 MR. BUSFIELD: Same topic, yes.

17 CHAIRMAN LOCKYER: -- problem.

18 It would probably make sense, then, to respond after all  
19 of that, I would think.

20 MR. HUFF: I think it might.

21 CHAIRMAN LOCKYER: The only suggestion which I would make  
22 for Members of the Committee, we have a couple of good staff  
23 members, like Arnie Peters and Ben Firschein, who could, between  
24 the time that Rules Committee took action and we allowed it to  
25 come up on the Floor, could make specific inquiries into  
26 complaints, so there's that potential, at least, for some  
27 investigatory type work.

28 Were there questions of Mr. Busfield? Thank you, sir.

1 MR. BUSFIELD: Okay, but the main concern I have, I  
2 guess, is, as far as the big picture is concerned, is that we are  
3 dealing with homes on dumps.

4 We have a process that seems more geared towards hazardous  
5 waste being excavated from an open field somewhere, and  
6 unfortunately, you're taking that process and forcing it, you  
7 know, a round peg in a square hole kind of thing, and it's  
8 obviously not working. And that certainly, I think, needs to be  
9 addressed and looked at, I think, for the future.

10 You know, we're interested in resolving this thing, if not  
11 for ourselves then for future people who are going to be in this  
12 position, and unfortunately, I don't see anyone really taking a  
13 huge interest in changing that process. And the one that's in  
14 place right now does not work for homes on dumps.

15 Thank you.

16 CHAIRMAN LOCKYER: Thank you.

17 I don't know if there's a particular order, but I have  
18 Jane Williams, Stormy Williams, Bradley Angel are names I have on  
19 a list.

20 The only thing I guess would be constructive, if it's all  
21 on essentially the same topic, is to try to be nonrepetitive.

22 MS. TURNER: Good afternoon. My name is Cathy Turner, and  
23 I live at 871 Channing Circle, Benicia, California.

24 I'm a member of the Channing Circle Residents Group, and  
25 I'm here regarding the Hides and Tires hazardous waste site.

26 This site is an illegal dump site by the responsible  
27 parties that Mr. Busfield was talking about earlier.

28 During Mr. Huff's term as Director, he has shown a serious



1 disregard for the rules and procedures that his Department is  
2 required to follow and enforce. Mr. Huff's management or lack of  
3 it can be shown by the sign-off of a negative declaration for our  
4 remediation site, which was done prior to the final testing  
5 results being received and reviewed.

6 My understanding is that the CEQA process mandates that  
7 all results must be received and completely reviewed before the  
8 signing of any documents.

9 Mr. Bill Ryan, Division Chief and appointee of Mr. Huff,  
10 signed off on the negative declaration, even though the  
11 procedures used to obtain test samples were questioned by state  
12 employees and an independent consultant hired by the City of  
13 Benicia and residents of Channing Circle.

14 The state was pushed by the R.P.s to sign off so that  
15 remediation of the Hides and Tires area could begin. The  
16 negative declaration the movement and disposal of acknowledged  
17 Class I waste to a Class II landfill.

18 When these facts were brought to the attention of the  
19 Class II waste facility, they declined to accept further waste  
20 from our site unless additional, independent testing of the  
21 wastes were done, and if the state would accept responsibility  
22 for them accepting this waste.

23 Correspondence was sent to Mr. Huff regarding questionable  
24 procedures, invalid sample gathering techniques, and the  
25 modification of test results to achieve the desired results at  
26 the Hides and Tires site by a representative of our group. The  
27 dates of these letters are December 5th and December 12th.  
28 Copies of letters to the Keller Canyon Landfill, dated the 12th

1 and 20th, are also included for your review.

2 Mr. Huff has not answered or responded to any of these  
3 letters in any way at this point.

4 To his credit, Mr. Lubin, which is one of the persons on  
5 the letters, did call Mr. Huff's office last Thursday to warn him  
6 that these letters were going to be brought up in the Committee  
7 meeting. He's assigned Mr. Jerry Marcot to respond to these  
8 letters since that time.

9 These letters addressed many of the concerns and issues  
10 raised by the residents of Channing Circle. We still don't have  
11 an answer.

12 Two of the most serious issues raised by these letters  
13 were unauthorized deviation from the submitted and approved  
14 investigatory work plan. Unauthorized actions were taken in the  
15 field which allowed no testing of actual waste be done. Samples  
16 were taken only of soil around the contaminated site.

17 Composite testing was used of waste piles after the fact,  
18 which waste was dug up, mixed with other material, left on the  
19 ground, covered in tarps for many weeks -- from the end of  
20 September through mid-November -- and then tested using composite  
21 testing. These results also were not considered valid for  
22 remediation and disposal. Additional testing for potholes, which  
23 they dug holes in the waste and then tested that, was done on the  
24 Friday before the negative declaration was signed on a Monday.

25 Procedures at this site have also endangered the health  
26 and safety of the residents. It's bad enough that we've lived  
27 with this, and it's been there, but the storage of the waste with  
28 tarps on the ground, on top of a hill, with a minimum 5 mile an

1 hour winds on a normal day, 85 mile an hour winds on a stormy  
2 day, left the neighborhood open to this waste flying through the  
3 air on our homes, into our yards, in a regular manner.

4 Additionally, they decided that it was now okay to move  
5 this waste, and they moved on one of the worst stormy -- some of  
6 the stormiest days this year. The material then flowed out of  
7 the back of the trucks onto our city streets, all the way down  
8 past our homes, and were staged in front of a Kindercare, where  
9 there's small children residing every day.

10 When Mr. Huff was made aware that the workplan had not  
11 been followed, which in Mr. Lubin's letter he has tried to bring  
12 up all these questions to get things corrected before any more  
13 work was done, Mr. Huff and his Department should have properly  
14 managed our site to ensure that the residents of Channing Circle,  
15 Solano County, and Contra Costa County, which is where Keller  
16 Landfill is, not replaced it by the incurrent storage and  
17 transportation of this waste.

18 I realize Mr. Huff and his Department does not have a lot  
19 of experience in remediating hazardous waste from beneath a  
20 residential area. Given the enormous responsibility that  
21 Mr. Huff and his Department have, as the designated responsible  
22 agency responsible for this site, they must ensure that all  
23 procedures and practices are followed, while providing a complete  
24 and thorough remediation, while protecting the neighbors' safety  
25 and health.

26 Thank you for your time and efforts on our behalf.

27 CHAIRMAN LOCKYER: Thank you.

28 Questions at all? Thank you.



1 Let me inquire if there's anyone else.

2 MS. SCIALABBA: Lorraine Scialabba.

3 Good evening. My name is Lorraine Scialabba, and I am a  
4 resident of Benicia.

5 And we've had a terrible tragedy happen there, because at  
6 one time, Benicia was voted the number one city in the Bay Area  
7 to live, before the toxic waste was discovered.

8 The toxic waste was discovered directly beneath the homes.  
9 Needless to say, that cast quite a different light on the number  
10 one place to live in the East Bay.

11 We were very thrilled whenever this project did go to Cal-  
12 EPA, because we really felt that there were going to be experts  
13 who were very sympathetic to our cause and were going to do their  
14 diligence in trying to solve and get this remediation going.  
15 However, that never happened.

16 I belong to a group that represents --

17 CHAIRMAN LOCKYER: Can you kind of paint the picture?  
18 Maybe I would have heard this earlier on, but it's mostly from  
19 the dump? Is that the cause of the toxic wastes?

20 MS. SCIALABBA: Yes. Actually, what happened was, there  
21 was a dump.

22 CHAIRMAN LOCKYER: When did that operate?

23 MS. SCIALABBA: '50s, '60s, a long time ago. Shut down.

24 The builder was supposed to get an order to scrape the  
25 valley to bedrock and come back with clean fill.

26 Surprise, surprise, ten years after people had lived  
27 there, Tom Busfield, the first gentleman who came up here, said,  
28 "Wow, I have this black stinky-smelling stuff in my yard. My

1 goodness, what could that be?"

2 It was turned out to be high levels of lead and chromium,  
3 and the builder immediately removed Tom, his four children, off  
4 the waste.

5 The other thing that came to light --

6 CHAIRMAN LOCKYER: What do you mean, removed?

7 MS. SCIALABBA: They came in and said, "Wow, you are out  
8 of here today."

9 CHAIRMAN LOCKYER: Took the soil, or moved them to another  
10 house?

11 MS. SCIALABBA: Moved them to another home.

12 CHAIRMAN LOCKYER: What happened to that home?

13 MS. SCIALABBA: That home is still there. That home is  
14 still under investigation. We are still into for four years.  
15 That home now has a sink hole under it, and we know no more today  
16 than we did four years ago.

17 CHAIRMAN LOCKYER: And it was four years ago that --

18 MS. SCIALABBA: Correct.

19 CHAIRMAN LOCKYER: -- Busfield was moved?

20 MS. SCIALABBA: Correct.

21 CHAIRMAN LOCKYER: How many homes are there in this  
22 development?

23 MS. SCIALABBA: Well, now that you ask -- actually, what  
24 happened was, Tom Busfield's house was right here in this little  
25 pink area, okay.

26 And what we later found out was, there was an adjacent  
27 court that also had liquid waste in it but was being monitored,  
28 which just came to light today, by Integrated Waste Management,

1 which I'm sure of the time you were there.

2 But I actually went to Integrated Waste Management,  
3 reviewed these files. Took a Xerox machine, requested, did the  
4 whole process. Requested that all the files be delivered so that  
5 I could get up to date on the process. And the women came in  
6 with a stack of material this high, and I find out that they have  
7 been monitoring nothing in this court for ten years, and the  
8 methane was at 40-45 percent; 5 percent is flammable.

9 The residents had lived in this subdivision on top of  
10 these homes [sic] for ten years and had no idea they were living  
11 on waste, no idea that they were being exposed to 40-45 percent  
12 methane.

13 CHAIRMAN LOCKYER: This isn't part of the pink area,  
14 though.

15 MS. SCIALABBA: Yeah, this is the pink area. What we  
16 did --

17 CHAIRMAN LOCKYER: It includes the methane area?

18 MS. SCIALABBA: Yes, yes.

19 CHAIRMAN LOCKYER: What are the pinks? Are they --

20 MS. SCIALABBA: Well, as you see, the more investigation  
21 that you do, the wider the story becomes.

22 CHAIRMAN LOCKYER: Yes.

23 MS. SCIALABBA: The yellow part is the hydrocarbon area.  
24 What we found out, what the builder said, "Oh, my goodness." We  
25 had a public meeting and he said, "My goodness, how could we have  
26 left this 10,000 cubic yards of waste? Yes, that's all there is.  
27 Honest, folks, that's all there is."

28 Well, needless to say, we did more investigation. We



1 rooted through more files. We tried to get Cal-EPA to say, "Hey,  
2 we still have the builder here. We have all the contractors  
3 here. We have the graders here. We have everybody who has been  
4 financially involved from the beginning. Interview these people;  
5 find out exactly what the story is; get all the facts. They are  
6 at your fingertips." They do nothing.

7 CHAIRMAN LOCKYER: When was this now? When were the  
8 houses --

9 MS. SCIALABBA: When the houses were built?

10 CHAIRMAN LOCKYER: -- built, yes.

11 MS. SCIALABBA: '81. But we just found this out three or  
12 four years ago.

13 CHAIRMAN LOCKYER: And who was the builder?

14 MS. SCIALABBA: South Hampton Homes, who is in  
15 conjunction First Nationwide Bank, who was a shell company that  
16 just sold. And actually, the new company is Ford Motor.

17 And the citizens have tried to get their name into  
18 everyone else's mind. We formed a new group called Friends of  
19 Rose Drive. We want FORD's name out there. We want you to know  
20 that there are lots of people who are very intelligent and that  
21 are handling this process. So, we are now the Friends of Rose  
22 Drive. We want this -- we want this to come to resolution.

23 And that's why I'm here today. That's why I'm dressed in  
24 black, mourning for our community, mourning that our city went  
25 from the number one place in the Bay Area to the toxic dump area.  
26 We're not getting any help from Cal-EPA.

27 We want to wear a rose, and I have one that's going to be  
28 distributed here for you today so you can know that we want Rose

1 Drive to go back to being Rose Drive.

2 CHAIRMAN LOCKYER: How many homes are in that entire  
3 subdivision or development? Could you estimate the whole thing?

4 MS. SCIALABBA: Well, it's not simple. You see, as we  
5 discover this, we found what they did was, they started at the  
6 bottom of the hill. And as they built, they kept moving the  
7 waste up the hill.

8 So, we went from the bottom of the hill, and now we're up  
9 at Channing Circle, which is an entirely -- you know, like two  
10 miles away from where the original waste was. And this thing  
11 keeps unfolding, and now we have extra documentation that leads  
12 us to believe that there are other areas that are not even on  
13 this map that contain the waste as well.

14 CHAIRMAN LOCKYER: So, how many homes in that whole  
15 subdivision? Is that all one thing, one neighborhood, so to  
16 speak?

17 MS. SCIALABBA: Yes, basically, basically.

18 CHAIRMAN LOCKYER: And can you estimate the number of  
19 houses?

20 MS. SCIALABBA: The original affected area was probably  
21 about 50, and now we're probably encompassing probably about 150,  
22 maybe even more.

23 CHAIRMAN LOCKYER: Okay.

24 MS. SCIALABBA: The concerns that I have about -- I was  
25 very disappointed to hear that Jesse Huff was involved with  
26 Integrated Waste Management. Like I said, I was appalled to find  
27 out that this investigation had gone on ten years. Residents  
28 knew nothing. Surprise, surprise, wow. What a wake-up call.

1 I have a problem with Mr. Huff because he was very  
2 unresponsive to us. I tried to get a meeting with him several  
3 times. He refused.

4 I scheduled a meeting with him. We had people take off of  
5 work. We showed up; he didn't show. We ended up meeting with  
6 Bob Buselieri.

7 We sent letters to him. He never responds to our letters.

8 The first time that I met him, I want to thank you for  
9 this confirmation hearing. Otherwise, I would have never had the  
10 chance to meet him today. I did get to meet him in the hall.  
11 There was a blessing for this assembly to meet at a later date,  
12 because we were all standing out in the hall, and we finally got  
13 to meet.

14 However, it does disturb me greatly that Browning-Ferris  
15 and the responsible parties know Mr. Huff very intimately. And  
16 that concerns me very well.

17 As far as I'm concerned --

18 CHAIRMAN LOCKYER: How is Browning-Ferris in this picture?

19 MS. SCIALABBA: Well --

20 CHAIRMAN LOCKYER: Do they own the dump?

21 MS. SCIALABBA: No, he's industry.

22 Industry seems to get the indoor --

23 CHAIRMAN LOCKYER: They don't own the dump; right?

24 MS. SCIALABBA: No -- regular people don't. Okay, that's  
25 what my concern is.

26 Is the mission statement for Cal-EPA the welfare of the  
27 people, or are they strictly going to get agents for the  
28 polluters? That's the concern that we are now coming to, because



1 what we do is, every once in a while, what we have is a big turn-  
2 around of people who are involved concerning the dumps. We have  
3 no corporate memory.

4 We did have one man who stood up -- his name was Stan  
5 Filippi, at a meeting with Assemblyman Hannigan and said that the  
6 developer and the investigation on this project would receive a  
7 "D" rating if he had to give them a grade. Mr. Filippi was  
8 pulled from this project faster than you can imagine. I could --  
9 we all had whiplash. He was gone in a flash.

10 I want you to know, too, that there are people who are  
11 doing a good job on this project. If they do a good job, and  
12 they challenge the developer, and they hold their feet to the  
13 fire, they are immediately withdrawn.

14 And what we have is a retraining process, so that's why we  
15 are revamped in this process for four years, with eight project  
16 developments [sic]. No one knows anything. The only continuity  
17 we have is Tom Busfield, myself, and a few other people who sit  
18 up at night and read the reports, and then we have to re-educate  
19 everyone. It becomes very frustrating.

20 CHAIRMAN LOCKYER: What happened to Mr. Soo Hoo? Where  
21 did he go?

22 MR. HUFF: He's at OEHHA, the Office of Environmental  
23 Health Hazard Assessment.

24 MS. SCIALABBA: Okay, right now the major concern, the  
25 big coup that's kind of going on, is that we have all this  
26 hazardous waste sitting out, covered by tarps in the rainy season  
27 since September. I'm not a finance major, but September,  
28 October, November, December, January -- five months we have

1 hazardous waste sitting out, directly adjacent to a park, because  
2 the developer does not want to generate information that he has  
3 Class I waste. He is desperately trying to revamp the system, or  
4 find a Class II waste who is willing to break the rules and take  
5 Class I waste.

6 There was an attempt to do that in Contra Costa County,  
7 and there were letters written to the Contra Costa County  
8 Supervisors. We wanted them to do samples of the waste. Split  
9 sampling done by the waste [sic] and the developer are a thousand  
10 times different.

11 I don't know how you can explain that, between the labs.  
12 If I have one complete sample and I split it in half, how could  
13 yours be a thousand times different than mine? I don't know how  
14 that happens.

15 I have no honesty or credibility in this sampling, in this  
16 testing.

17 We get a developer who tells us that the leather and the  
18 hides that are buried in that area is harmless. It's just like  
19 children chewing on shoe leather. And that really what we're  
20 getting is our minerals for the day, and we should -- just really  
21 shouldn't be concerned about it at all.

22 Somehow, I find that really hard to believe, and it's  
23 actually very insulting to my intelligence.

24 So, to get you on line, Friends of Rose Drive, Ford Motor,  
25 we want our community back smelling like roses. We're mourning  
26 what's happening. Please, no Jesse Huff, no Paul Blais.

27 Paul Blais is trying to squelch the process as well. He  
28 has taken this whole --

1 CHAIRMAN LOCKYER: He's not before us.

2 MS. SCIALABBA: I know, but if he is considered as a  
3 replacement, I want you to --

4 CHAIRMAN LOCKYER: Replacement for whom? Oh.

5 MS. SCIALABBA: I want it to be known that he has in fact  
6 removed most of the decision making from the Project Manager, who  
7 are the technical people. So, now we have finance people making  
8 technical decisions, which makes absolutely no sense to me.

9 I also want to say that Bill Ryan, what we tried to do for  
10 the state, because we really are very friendly to the state --  
11 you see, the developer -- we were really concerned about the  
12 state's budget. The developer ran up a \$750,000 bill with the  
13 state. And what we heard rumblings were that the state was going  
14 to cut staff because you had no money.

15 So, we got the City of Benicia to get together with  
16 Assemblyman Hannigan, had a meeting at City Hall and said, "Hey,  
17 why doesn't this developer reimburse the state for all of their  
18 expenses? Why should poor communities suffer because the state  
19 has no funds to do further investigation?"

20 When you have Ford Motor Company, who's just spewing tons  
21 and tons and tons of money into bad testing that's absolutely  
22 worthless anyway, and what we really want is the state to do  
23 their split samples so that we can generate information that  
24 their testing is a thousand times different.

25 Well, we asked -- eventually, the City acquiesced. They  
26 asked the developer. Lots of pressure was put on the developer.  
27 The state got their \$750,000. We supposedly had no people cut  
28 from this investigation.



1           So, we went to Paul Blais and said, "Okay, Paul. Now the  
2 City of Benicia is now having a problem. What we want is, we  
3 want to do the same thing. We want to hold the developer  
4 accountable. The City has budget problems at this point in time.  
5 What we want to do is issue a letter of support, telling them  
6 that all the agencies can work together. We present a united  
7 front, we do want to find the bottom to this project." And  
8 basically, he told me, "No."

9           I have raised a fuss about that, and I think he has  
10 recanted that position. But there is no cooperation between the  
11 state and the City, and this is making this process a little more  
12 difficult, unless citizens from Friends of Rose Drive get  
13 involved, make this information public, and hold the state to the  
14 fire.

15           Now, what is the mission statement of the state? Are you  
16 going to be agents for the responsible parties and turn your head  
17 the other way? Or are you really going to look out for the  
18 health and welfare of the innocent people who get caught up in  
19 these toxic waste problems because you have a developer who wants  
20 to take a chance, and it might be a little more expensive than he  
21 really finds comfortable.

22           I have roses that need to be passed out.

23           Thank you so very much for this opportunity. I got a  
24 chance to meet Mr. Huff, and I thank you all for your time.

25           SENATOR PETRIS: Thank you.

26           SENATOR BEVERLY: Is there any additional witness? Come  
27 forward, please.

28           MR. ANGEL: Good evening. My name is Bradley Angel, and

1 I'm the Southwest Toxics Campaign Coordinator for Greenpeace USA.

2 And I'm here in opposition to the confirmation of Mr.  
3 Huff.

4 For the last ten years, I've worked with so many dozens of  
5 communities from all walks of life in this state, from Northern  
6 California, to the Bay Area, to Sacramento, to the San Joaquin  
7 Valley, to Los Angeles, to the Imperial Valley. Upper middle-  
8 class White folks, poor African-American, Latino farmworkers,  
9 native. All types of folks.

10 And what we know after so many years, and I'm not telling  
11 you anything you don't know, is that the threat of toxics and the  
12 impact on people's health and quality of our air and water has  
13 been severe in many cases, and in many cases if not all, it's  
14 been avoidable.

15 The problems that you're hearing about today with the  
16 State Department of Toxics Substances Control were not created by  
17 Mr. Huff. Indeed, he inherited them.

18 But indeed also, he has done, to our knowledge, virtually  
19 nothing to correct the problems. And in fact, in many cases, and  
20 I will touch on a number of those, his agency under his watch has  
21 contributed to the contamination of our communities, of our  
22 residents, of our air and water.

23 We've heard much talk in the last year or so about our  
24 state officials being against affirmative action. But I want to  
25 tell you of one area where our state government supports  
26 affirmative action, and that is in the siting of hazardous waste  
27 facilities in communities of color.

28 In the State of California, there are three toxic waste

1 dumps that are licensed by Mr. Huff's agency: Kettleman City,  
2 Buttonwillow, and Westmoreland. Three out of three, 100 percent,  
3 are in Latino, predominantly Spanish-speaking, farmworker  
4 communities. Three out of three, 100 percent.

5 And in those three, the words "public participation" are a  
6 joke. The claim that the state supports public participation is  
7 little more than a hallucination.

8 This summer in Buttonwillow, west of Bakersfield, the  
9 State of California, Department of Toxics, held a so-called  
10 public hearing. In fact, was forced to continue it on a second  
11 night. The state, despite the fact that there's a huge  
12 population of monolingual Spanish speakers in the impacted  
13 community, refused to translate documents into the language that  
14 the people understand.

15 Mr. Huff has said he upholds CEQA, which mandates public  
16 participation. And of course, you know that the Tanner Law, a  
17 state law, is involved in the siting and permit decisions around  
18 hazardous waste facilities.

19 As I say, the state refused to translate documents.  
20 Department of Toxics Substances Control staff, in front of the  
21 people of Buttonwillow, made the ridiculous statement that the  
22 Kern County's permit process for the expansion, proposed  
23 expansion, of the Laidlaw hazardous waste facility was a  
24 legitimate process.

25 And it's unfortunate that they showed their bias at a  
26 public hearing when they were still supposed to have an open  
27 mind. In fact, I asked a state official point blank this summer,  
28 during a permit meeting in Buttonwillow -- in Bakersfield -- I'm



1   sorry, in Buttonwillow, if the Kern County process was  
2   legitimate. They said it was.

3           For the record, I was arrested under order of the Chairman  
4   of the Board of Supervisors for attempting to testify  
5   bilingually, for stating my name and the organization I worked  
6   for in Spanish, so that the Spanish speaking audience could  
7   understand. I was dragged from the room and thrown in jail.

8           This is the legitimate public process, so-called, that  
9   Mr. Huff's agency publicly stated was legitimate.

10          In fact, under the County's implementation of the Tanner  
11   process, there was never a public hearing in the impacted  
12   community. Never a public hearing in the impacted community.

13          But the state's hearing in Buttonwillow wasn't much  
14   better. It was interesting to hear Mr. Shabazz in South Central  
15   talk about the sound system.

16          For two hearings, two meetings in Buttonwillow, the sound  
17   system didn't work that the state brought. At first, people  
18   thought it was just a fluke. Now we don't know.

19          If the state is so impartial, why is it that the  
20   California Pollution Financing Authority, a couple of years ago  
21   -- well, actually about four years ago -- loaned \$24 million to  
22   Laidlaw, including funds for the expansion of a facility, for a  
23   decision that wasn't made yet? The people in the community  
24   raised objection to it, as did Greenpeace and others.

25          Of course, the state responded by saying, "Well, we're not  
26   biased at all."

27          In Buttonwillow, as in Kettleman City and Westmoreland,  
28   due to their being farmworker communities, where the people are

1 impacted by cancer-causing pesticides as they work in the fields,  
2 they are also living next to toxic waste dumps.

3 Our communities need pollution prevention. We need a  
4 reduction of the amount of waste being dumped in our communities  
5 and generated in the chemical plants and petrochemical industries  
6 of this state and others.

7 Unfortunately, even though there is sufficient capacity  
8 for landfills in the United States, the Department of Toxics is  
9 working -- mark my words, they will issue the approval -- to  
10 expand the Laidlaw facility in Buttonwillow, despite the fact  
11 that we have a heavily impacted community, that Laidlaw has a bad  
12 track record, that the process violated state law, and the fact  
13 that pollution prevention and not expanded landfills should be  
14 the priority of the day.

15 In South Central Los Angeles, I've been there, unlike  
16 Mr. Huff. I was poking around outside that facility, the  
17 Statewide Environmental Services, and the plant manager, a very  
18 nice gentleman, invited me in. Didn't know I worked for  
19 Greenpeace, but he invited me in.

20 What I saw horrified me. As you heard, right next to the  
21 facility, though the fences are eight or ten feet high, were  
22 hundreds of barrels of hazardous waste jammed together, right  
23 next to people's homes.

24 There was an open truck getting loaded with hazardous  
25 materials that were blowing into the backyards of the neighbors.  
26 The material was blowing right over the fence.

27 I was given a tour of the laboratory, which nearly  
28 sickened me, literally. The floor was stained with chemicals.

1 The garbage can, which said "Clean Everyday", was overflowing  
2 with stained materials. Opened bottles with what I presumed to  
3 be hazardous materials unlabeled, but with liquid in them, were  
4 lying on their filthy counter. The room was pretty much  
5 unventilated.

6 Most of the workers there were people of color.

7 I assure you that this type of facility would never be  
8 located in Beverly Hills. It would never be located where any of  
9 the distinguished Members of this Committee live. And if it was,  
10 it would have been closed immediately.

11 Mr. Huff was not responsible for siting that facility  
12 there, but if he's serious about his concern, if he's serious  
13 about putting an end to environmental racism practiced by his  
14 agency, he will recommend to the L.A. Planning Commission, who's  
15 taken this matter up, that the facility not receive a new permit.

16 Now moving on, the United States Environmental Protection  
17 Agency, and many distinguished scientists across this country,  
18 have done a re-assessment of the dangers of dioxin, one of the  
19 more dangerous chemicals known to science. It is the active  
20 ingredient that, in Agent Orange, that caused so much harm to  
21 American G.I.s in Vietnam.

22 But that war that was fought in Vietnam is not the only  
23 place where there's dioxin victims. Across California and the  
24 United States, we're seeing that.

25 What is the Cal-EPA doing about it and the Department of  
26 Toxics? Nothing to protect our citizens.

27 You'll hear in a few minutes from Stormy Williams. Near  
28 where Stormy lives is the only pay-to-burn commercial incinerator



1 in the State of California.

2 No, Mr. Huff was not around when that facility was first  
3 allowed to burn hazardous waste with no Environmental Impact  
4 Report, even though they burn some of the most dangerous  
5 substances we know of.

6 That facility is up for a permit renewal. Where is the  
7 Environmental Impact Report? I guarantee you, unless things  
8 change, there will be another negative declaration there for a  
9 facility that has a track record of huge violations of the law.

10 And by the way, the US EPA dioxin re-assessment has  
11 documented that dioxin is not less dangerous than we thought, but  
12 more dangerous. And not just for cancer, but for reproductive,  
13 developmental, and immune deficiencies in men and women.

14 Another place that the DTSC is less than lax, and in fact,  
15 as far as we're concerned, is in bed with the chemical industry,  
16 and it's unfortunate, but people from Richmond would have liked  
17 to have been here today. In Richmond, a predominantly African-  
18 American community, they're living under the stacks of the  
19 Chevron Ortho incinerator.

20 That facility, too, has been on endless interim status.  
21 It is a joke.

22 About a year and a half ago, the state finally got around  
23 to saying we want to test burns in that community. The  
24 community, Greenpeace and others asked for input for public  
25 hearings on that. We were told no.

26 Chevron Ortho is one of the companies that participated in  
27 the state agency's allegedly successful incinerable waste  
28 reduction program, which allegedly reduced incinerable waste by

1 50 percent.

2 Now, if they reduced -- participated in an allegedly  
3 successful program, why is the state even considering allowing  
4 Chevron Ortho to double the capacity of their incinerator? If  
5 we're serious about pollution prevention, how could you even  
6 consider expanding the capacity of an incinerator that is  
7 adjacent to a school. True, the kids in the school don't have  
8 white skin. They aren't rich. But their lives are worth every  
9 bit as much as ours.

10 The people in Richmond want some answers. They want that  
11 incinerator shut down, not expanded. And if you're serious, and  
12 you're going to follow science and public policy, and not  
13 participate in environmental racism, that expansion must be  
14 denied, and we want some answers.

15 Mr. Huff said he's interested in public information. For  
16 all these years, I still cannot get a list to this day, and I ask  
17 you, will you provide me with the full list of chemicals used and  
18 emitted from the Chevron facilities? You cannot get a full list.

19 Moving on, if Mr. Huff's agency is so interested in  
20 protecting the public health and environment, how is it that on a  
21 little Indian reservation called the Cahuilla Reservation, some  
22 of the aboriginal people of this state, how is it that an illegal  
23 dump, in violation of federal law, not only is allowed to  
24 operate, but is given an I.D. number by Mr. Huff's agency?

25 Now, it is indisputable that this operation is illegal.  
26 And the tribal members that I worked with there are not asking  
27 for the state to stomp on tribal sovereignty.

28 What they are asking is that the state not give their

1    tacit blessing by giving an I.D. number to a blatantly illegal  
2    operation. It is a double standard. It is environmental racism,  
3    and it has to come to an end, but it's continued under Mr. Huff's  
4    oversight.

5            In Bayview Hunter's Point in San Francisco, there was  
6    recently a study that came out in August. And that study  
7    documented that African-American women under the age of 50 in  
8    Bayview Hunter's Point, which, as many of you know, is where most  
9    of the dirty industries in San Francisco are located, that  
10   African-American women under 50 in that community have twice the  
11   rate of breast cancer. Twice the rate of breast cancer as women  
12   not living in that impacted community.

13           And the County of San Francisco now admits that it is tied  
14   to the toxics that have been dumped recklessly in that community  
15   for decades.

16           Recently, and actually right now, the DTSC is conducting a  
17   review of, quote-unquote, "cleanup options" at a site where yet  
18   another toxic emitting industry is being proposed, a power plant.  
19   There is not ifs, ands or buts about it. This power plant would  
20   emit additional toxics, including carcinogens, into the air of  
21   this already devastated community with some of the highest breast  
22   cancer rates known on this planet.

23           In the so-called fact sheets distributed by Mr. Huff's  
24   agency, it referred to the power plant as saying "when it is  
25   built."

26           Well, maybe you know something that we don't. As far as  
27   we know, there's still a public process going on. As far as we  
28   know, that power plant may never be built.



1 And if the DTSC was doing its job, it should see to it  
2 that no new sources of toxic exposure are placed in a community  
3 where African-American women, or for that matter, people of any  
4 color, have twice the rates of breast cancer as women not living  
5 in that community.

6 We already know that the Bay Area has some of the highest  
7 rates of breast cancer in the entire world. But the African-  
8 American women under 50 have twice that rate.

9 And your agency is complicit in the siting of this new  
10 power plant. We don't need complicity. We don't need silence.  
11 We need advocacy to protect the public health and environment.

12 Unfortunately, I could go on, but I'll stop there because  
13 I've taken too much time already.

14 As I can say, there were a number of communities that had  
15 hoped to be here, and a representative of the people of  
16 Buttonwillow had to leave because of the delay in the meeting.  
17 And if you could bear with me for two minutes, he asked me to  
18 please read -- and I'll give a copy of this to you -- a letter  
19 from Padres Hacia Una Vida Mejor, Parents for Better Living,  
20 which is the community group representing people in Buttonwillow,  
21 fighting the Laidlaw dump expansion. January 16, 1996:

22 "Dear Hearing Chairperson,

23 "This short letter we hope you can  
24 accept in lieu of our being present at  
25 this hearing. We are Padres Hacia Una  
26 Vida Mejor, or 'Parents for Better  
27 Living', a group of farmworkers from  
28 Buttonwillow, a small farming community

1 in Kern County. We would have liked to  
2 been there to express the following in  
3 person but we need our small daily wages  
4 to support our families and can not  
5 afford the cost needed to make it  
6 possible to go before you.

7 "We have been opposed to Laidlaw's  
8 permit modification application for the  
9 last three years. We have had to deal  
10 with California's Department of Toxics  
11 Substances Control since then also. We  
12 feel that we have been discriminated by  
13 them, and that although they pretended  
14 to hold their hearings, they are still  
15 going to give this 'corporate polluters'  
16 the permits they have requested and are  
17 denying everyone else in our community  
18 the right to raise our children in a  
19 clean and safe environment.

20 "Even before they held the  
21 hearings, they had provided Laidlaw with  
22 a low interest multi-million dollar loan  
23 towards the expansion of the Laidlaw  
24 facility, which does not 'officially'  
25 have a permit yet.

26 "We need someone who will listen to  
27 all the facts and to make decisions that  
28 will not only provide industry to

1 California, but that will keep small  
2 communities like ours from having to  
3 carry the burden of these polluters.

4 "We strongly oppose the  
5 confirmation of Mr. Huff as director of  
6 the DTSC because he has made our  
7 community one of his mistakes. He makes  
8 the mistakes, and our children and  
9 future generations carry his burdens.

10 "On behalf of Parents for Better  
11 Living, we thank you for this  
12 opportunity to be allowed to participate  
13 in this process.

14 "Sincerely, Lorenzo Garcia and Rosa  
15 Solorio-Garcia."

16 And again, thank you for your time.

17 In closing, I would just say that for once, could we have  
18 a Director of his agency who'll really protect public health and  
19 the environment, and not just represent the interests of the two  
20 speakers -- if you look at the two speakers who spoke  
21 recommending him. It was two representatives who work directly  
22 with the waste industry. One a consultant for the waste  
23 industry, and one the waste industry themselves.

24 And not that those voices shouldn't be heard here, but  
25 that should paint the picture of the problems we're facing today.

26 We need to be solution oriented, but we need somebody  
27 who's really not going to put up California's -- the health of  
28 Californians up for sale.



1 CHAIRMAN LOCKYER: Mr. Angel, I think Senator Lewis has a  
2 question.

3 SENATOR LEWIS: I was hoping you could clarify just one of  
4 your statements for me.

5 MR. ANGEL: Yes, sure.

6 SENATOR LEWIS: The study that you talked about, the Black  
7 women with breast cancer in Hunter's Point. It was twice the  
8 incidence, is that what you said?

9 MR. ANGEL: That's right. And if you'd like, I'd be glad  
10 -- I can tell you how to get it, but I'd be glad to get you a  
11 copy.

12 SENATOR LEWIS: Twice --

13 MR. ANGEL: Yes, African-American --

14 SENATOR LEWIS: Compared to whom?

15 MR. ANGEL: To women not living in that community in San  
16 Francisco, so twice the rates of breast cancer.

17 SENATOR LEWIS: To women in America?

18 MR. ANGEL: No, I think San Francisco.

19 And already prior to that, San Francisco and also, for  
20 example, Marin County were already thought to have alarming rates  
21 of breast cancer.

22 What's clear is, we're seeing that very prevalent in  
23 society in terms of dramatic increases. What's also clear is  
24 that directly impacted communities, like Bayview Hunter's Point,  
25 are even higher than anyone would have dreamed.

26 And Mr. Huff's agency is apparently --

27 SENATOR LEWIS: Not being familiar with Hunter's Point, is  
28 that an impoverished area?

1 MR. ANGEL: Yeah, African-American community primarily. A  
2 lot of new Asian immigrants in there. It's right near  
3 Candlestick.

4 CHAIRMAN LOCKYER: No hunting.

5 MR. ANGEL: No, no hunting.

6 SENATOR LEWIS: Do you have a comparison to breast cancer  
7 rates to other African-American communities of women under 50 in  
8 improverished areas?

9 MR. ANGEL: Well, we know -- first of all, we know that  
10 there's not adequate studies across the country. In fact, where  
11 we first heard a lot of these studies with wealthier areas, such  
12 as Marin County, or even other parts of San Francisco. What is  
13 now coming -- and we heard through more word of mouth  
14 information.

15 And, you know, I've worked in Bayview Hunter's Point for  
16 years, and I knew from talking to people, but this study  
17 substantiated the incredible rates of breast cancer impacting  
18 that community.

19 Again, it's not the definitive study, but it sure set off  
20 the alarm bells. And the County of San Francisco has now come  
21 out and acknowledged that there is some link between those rates  
22 and the toxics in that community.

23 And it's very alarming, and it's kind of like the canary  
24 in the cage, and it's time that we acted for prevention.

25 You know, the DTSC supposedly -- Cal-EPA did this  
26 incinerable waste reduction program, claimed remarkable success.  
27 We don't know how successful it was. We hope it's as successful  
28 as they claim.

1           Again, again we seem them going to expand facilities for  
2   landfills and incinerators.

3           Now, you can't have it both ways, and we want to know  
4   which way is it going to be? Is it going to be prevention or  
5   profit?

6           CHAIRMAN LOCKYER: Okay, thank you.

7           MR. ANGEL: Thank you so much.

8           MS. WILLIAMS: My name is Stormy Williams. I reside in  
9   the high desert in the town of Roseland. It's between Mojave and  
10   Lancaster. It's where the Space Shuttle comes down at Edwards  
11   Air Force Base.

12          I'm President of California Communities Against Toxics.  
13   We're a statewide coalition. We work on world peace, pollution  
14   prevention, and environmental justice.

15          And you have seen today our members in action. And you  
16   have seen the frustration in their faces and in their voices when  
17   they have talked to you about their individual problems in their  
18   communities.

19          Mr. Busfield, the two ladies from the Rose Court area, Mr.  
20   Shabazz, who I picked up at the airport this morning, these are  
21   people in our coalition.

22          We have people in quarter of a million dollar houses. We  
23   have people in South Central. We have Indians with nothing. We  
24   have the whole gamut.

25          And I am here to talk for all of them, including the  
26   Latino gentleman who had to leave because this went on so long.

27          We formed this coalition to give strength to grassroots  
28   groups, because we're under siege in this state. We're totally



1 under siege.

2 The town I live in has the highest cancer cluster in  
3 children, the highest rate. We have nine children afflicted,  
4 seven are dead. I received a call last week, a child that moved  
5 in '91 has come down with inoperable brain cancer. He's on the  
6 way out. So, our figures will probably change now to eight out  
7 of ten.

8 I cannot understand why we can't walk down a path for  
9 health and safety. I don't care what kind of house you live in,  
10 what kind of car you drive, how much money you make. If you  
11 don't have your health, you don't have anything.

12 CHAIRMAN LOCKYER: Ms. Williams, I'd like you to try to  
13 comment as much as you can specifically on Mr. Huff and his  
14 qualifications.

15 MS. WILLIAMS: Yes.

16 Mr. Huff is looking to be confirmed. One of our problems  
17 is that I live near National Cement, which is the state's only  
18 pay-to-burn toxic incinerator. It's been operating for 14 years  
19 on interim status. It's never had an EIR.

20 We had sick people out around there, spent over \$450,000  
21 in fines, innumerable problems, and they are now looking to give  
22 it another negative declaration.

23 And we feel that the EIR process in CEQA is being  
24 circumvented quite often, way too often.

25 And I have some fact sheets here and chronologies about  
26 National Cement.

27 Another problem that we have with these negative decs.  
28 that we got involved in is the PureEtch facility in Salinas.

1 It's an etchant recycling facility, and they refused to do an  
2 Environmental Impact Report on this facility, which is next to  
3 Latino farmworkers.

4 CHAIRMAN LOCKYER: Were these on his watch?

5 MS. WILLIAMS: Yes.

6 CHAIRMAN LOCKYER: While Mr. Huff has been --

7 MS. WILLIAMS: We went in with a suit, and here is the  
8 copy of the suit. And the Judge now has demanded a focused  
9 Environmental Impact Report, and I don't see why we have to go to  
10 court.

11 CHAIRMAN LOCKYER: Where was that?

12 MS. WILLIAMS: In Salinas. It's called the PureEtch  
13 facility, which is an etchant recycling facility.

14 CHAIRMAN LOCKYER: Was that CEQA action?

15 MS. WILLIAMS: Yes, and this is also in the negative  
16 declaration, there was no mention of the Latino farmworkers in  
17 apartments right next to the place.

18 So, we do not feel that the DTSC over the last year has  
19 proceeded down the road for health and safety. We feel that it  
20 has become more of a permit streamlining and business promotion.  
21 And we don't feel that Department of Toxics Substances Control  
22 should be a business advocacy group. That should be left to the  
23 Commerce Department or other departments.

24 And I do represent a lot of people who are  
25 disenfranchised, and we feel that everybody in this state  
26 deserves their health and safety taken care of first, and  
27 business interests have to come in under people's health.

28 And this is the paperwork on the PureEtch suit, if you'd

1 like to pass it. And this is the fact sheet and chronology on  
2 National Cement, so you can see exactly what's been going on over  
3 the last 14 years that we've been putting up with this place.

4 And in addition to this, where I live we have 24 toxic  
5 sites, including the state's worst toxic site with the highest  
6 dioxin level. And some of the cleanups there are very slow, even  
7 though some of the responsible parties can pay. Some of them  
8 seem to be stymied, and I don't understand why when there is  
9 money available.

10 And I did want to mention that we have some project  
11 managers that have done a pretty good job in our community, and  
12 we don't just run around complaining about everybody in this  
13 Department. But we don't feel the leadership for health and  
14 safety is here when Mr. Huff has been at the watch.

15 Thank you.

16 CHAIRMAN LOCKYER: Thank you, ma'am.

17 Is there any other? Senator Lewis.

18 SENATOR LEWIS: Can I just ask a question? Just another  
19 point of clarification.

20 The cancer cluster that you identified with the ten young  
21 children, that's over what period of time and that's encompassing  
22 how much population?

23 MS. WILLIAMS: The ten at the time of the cancer cluster  
24 was approximately 3,000 people. The timeline was about '74 to  
25 '83. There was nine children afflicted. Their ages ranged from  
26 3 to 17. Seven died, and over half of the seven died of a very  
27 rare brain stem cancer.

28 They've done three studies, and they got part way through



1 the last study when the Dunsmuir spill happened, and they had to  
2 take the money and go up there, so they've never finished the  
3 study.

4 So, the parents of these children will probably never know  
5 what caused the death of these children. And now, as of last  
6 week, we have another one.

7 SENATOR LEWIS: Thank you.

8 CHAIRMAN LOCKYER: Thank you.

9 Any additional comment?

10 MS. WILLIAMS: Good morning, Chairman, Members of the  
11 Committee.

12 Senator Lockyer, just to jog your memory, the last time we  
13 met it was with the Mexican Delegation from Baja.

14 I'm Jane Williams with Desert Citizens Against Pollution.  
15 As well, I'm an affiliate member of California Communities  
16 Against Toxics, and I do quite a bit of work in Sacramento for  
17 that group, and I've had the occasion to work with Mr. Huff over  
18 the last year.

19 And in his defense, I will say that he's been much more  
20 responsive to the needs of community groups than his predecessor,  
21 Mr. Soo Hoo.

22 However, we have a new set of problems which Members of  
23 the Legislature in general need to be aware of, and this  
24 Committee especially.

25 I want to start out with the dioxin report which was  
26 previously mentioned, but I want to reiterate the fact that over  
27 the last year, I've asked repeatedly for the kinds of health risk  
28 assessment that was done in the dioxin report, which is the

1 state-of-the-art health risk assessment, to be reflected in the  
2 decisions of the Department of Toxics Substances Control. And  
3 I've been told over, and over, and over again that the Department  
4 is not going to review the report until the report is finalized  
5 by the EPA.

6 I've spoken with Mr. Becker from OEHHA and also various  
7 members of the Department.

8 The impact of this is that the State of California  
9 continues to produce hazardous waste as a result of its economic  
10 practices. However, the risk of the continued production of that  
11 waste is not being taken into account here.

12 The state is continuing to expand its capacity to both  
13 landfill and burn waste without a cohesive and cogent pollution  
14 prevention plan.

15 What does this mean for the State of California? It means  
16 that we are destined to inherit more Stringfellow acid pits.

17 Now, I'm an environmental economist. I understand the  
18 political process very well. I know that it runs, just like  
19 everything else runs, it runs on money.

20 The state currently is liable for \$750 million at the  
21 Stringfellow acid pits. The federal court decided that because  
22 the state had permitted the facility, it allowed the dumping to  
23 take place there.

24 Now, California has that under appeal.

25 Gentlemen, if we lose that appeal, we become liable for  
26 \$750 million for only one toxic repository. The state currently  
27 has Stringfellow and Casmalia that are both environmental  
28 catastrophes, and we have three operating facilities now, one of

1 which is leaking.

2 I am very concerned about the fiscal impact that the state  
3 is going to bring upon itself in continuing to expand the  
4 production of the hazardous waste in the state without coming to  
5 grips with this.

6 When we expand the ability of the Laidlaw facility in  
7 Buttonwillow to bring in waste, we expand along with it the  
8 potential in the future for the state to bear the cleanup cost  
9 because of this court decision.

10 The orphan shares, when a company goes out of business and  
11 is no longer there to be a PRP, the state has to take up that  
12 orphan share. The bill for that orphan share now is anywhere  
13 from \$30-40 million per year. That's the cost that the state is  
14 going to have to bear.

15 And as an economist, I really think that we need -- that  
16 the State Legislature really needs to be aware of this. When you  
17 understand that the continued production of hazardous waste in  
18 California has a real cost, it has a real cost. It's \$40  
19 million; it's \$750 million; it's a billion dollars. It's a cost  
20 that is rising at an escalating rate.

21 And to that end, I believe that we cannot afford not to  
22 have a pollution prevention plan. And you probably remember,  
23 Senator Roberti passed SB 14, which was an attempt at some sort  
24 of pollution prevention, which Mr. Huff and his Department is  
25 basically failing to implement. And I believe that we need  
26 Mr. Huff and whoever is his predecessor to grapple with this  
27 issue. The costs are going to be staggering.

28 CHAIRMAN LOCKYER: Would you go back to Stringfellow for a



1 minute.

2 What happened with respect to the court decision?

3 MS. WILLIAMS: The court ruled that because the state had  
4 permitted the facility, the state decided under what conditions  
5 companies would be allowed to dump their wastes there, that it  
6 bears the cost for the cleanup.

7 CHAIRMAN LOCKYER: This was what court?

8 MS. WILLIAMS: This was a federal court. This was a year  
9 and a half ago.

10 CHAIRMAN LOCKYER: And what --

11 MR. HUFF: Well, I can speak to that.

12 The essential outlines are close to what Ms. Williams  
13 says.

14 MS. WILLIAMS: That's under appeal, I believe; right?

15 MR. HUFF: Yes.

16 MS. WILLIAMS: Of course, you appeal that decision.

17 But the cost, the potential cost to the State of  
18 California is staggering.

19 CHAIRMAN LOCKYER: I heard the number.

20 MS. WILLIAMS: That's only for one. That's only for  
21 Stringfellow.

22 Now we have Casmalia. We have Operating Industries. We  
23 have BKK. We have the two Laidlaw facilities. We have Kettleman  
24 City.

25 When we are continuing to expand our capacity to bring  
26 waste in and to burn waste, we are bringing upon ourselves this  
27 horrible cost.

28 Now, under the regulatory structure program, as you

1 probably well know, the Legislature has not passed over the past  
2 couple of years any legislation that would deregulate  
3 California's hazardous waste. We still have much of the waste  
4 produced in this state because it is called "California-only"  
5 hazardous waste.

6 Part of the regulatory -- the internal regulatory reform  
7 process that the Department of Toxics Substances Control is  
8 undergoing under the leadership of Mr. Huff is to deregulate that  
9 waste, meaning that it will not go to Buttonwillow, it will not  
10 go to Kettleman City, it will not go to the Laidlaw facility in  
11 Westmoreland. Rather, it will go to a municipal waste dump.  
12 It's taking it from one pile and putting it into another. Now,  
13 basically, turning all the municipal waste dumps in the state,  
14 potentially, into toxic waste dumps.

15 This internal regulatory reform, this changing of the  
16 disposal costs, where the disposal costs will then go down, will  
17 only increase the amounts of waste, and again, contribute to this  
18 potential problem in the future.

19 To bring all this together, this is why I think it is so  
20 important, and why many of you have seen me in this Legislature  
21 for the past four years, fighting to keep the California  
22 Environmental Quality Act.

23 There is no law in this state that tells people or  
24 protects people from being poisoned. There's no law against  
25 companies or corporations poisoning people.

26 However, there is a law against not telling them, and  
27 that's CEQA. And this Department is refusing, despite what  
28 everyone says, to implement CEQA. And let me give you the most

egregious example I can possibly think of.

Short of atmospheric nuclear weapons testing, the single most dangerous and hazardous practice is the incineration of nuclear waste. The incineration of nuclear waste leads to the release into the atmosphere of nuclear waste.

Lawrence Livermore Lab is building a nuclear incinerator in California, telling the Department it is a treatability study, and continuing to build it without any permits and without any Environmental Impact Report.

The other five Department of Energy sites in California have had their site treatment plans for the onsite disposal and treatment and transport of mixed nuclear waste, which is nuclear waste that's contaminated with hazardous waste -- we're talking about large amounts -- without a negative declaration. No EIRs. Simply a rubber-stamp from the Department of Toxics Substances Control: trust us.

Now, when DOE says "trust me", the first thing I think about is another human radiation experiment, and that's exactly what's happening.

I think that the Department of Toxics Substances Control has a moral imperative to protect the human health and the environment.

Now, California Communities Against Toxics is concerned about the environment, but I have to tell you, we're much less concerned about the environment than we are about human health, especially the health of our children. And when we start talking about the building of a nuclear incinerator in this state without any Environmental Impact Report, and without adequate oversight



1 by the Department, that's enough to make my hair stand on end.

2 I could go on, but in the efforts of time, to summarize, I  
3 will leave it strictly under the leadership of Mr. Huff.

4 We have a lack of regulatory oversight over very dangerous  
5 activities taking place in the state.

6 We have a lack of leadership to protect the fiscal impact  
7 to the State of California, which Mr. Huff, I'm sure, is very  
8 well aware of.

9 We have the failure to implement the California  
10 Environmental Quality Act, which is really all that stands  
11 between the community groups, the citizens of this state, and  
12 toxic industries and hazards that come into them.

13 And now we have the Department of Toxics Substances  
14 Control rubber-stamping the site treatment plans for the six DOE  
15 facilities in this state, and looking the other way while  
16 Lawrence Livermore Labs build a toxic incinerator.

17 Thank you for the opportunity to testify.

18 CHAIRMAN LOCKYER: Thank you.

19 It may be a point worth making that at least in recent  
20 elections, those that believe CEQA and other such laws are unduly  
21 burdensome have been winning elections, so that the trend is, and  
22 there's now one House of the Legislature that's probably ready to  
23 discard CEQA entirely, and I don't know what number in my House.  
24 I'd better not guess, some, who would.

25 But anyhow, I just make the point that the trend is  
26 contrary to the general points that have been made.

27 Senator Petris.

28 SENATOR PETRIS: I had a question on the Livermore thing,

1 the Livermore facility project.

2 That's funded by the feds, I guess. Both Department of  
3 Energy in the federal government has a role, and the state has a  
4 role.

5 Who's the moving party on this one?

6 MS. WILLIAMS: The moving party is the Department of  
7 Energy.

8 Just to give you a quick, 30-second background. In 1992,  
9 quite frankly, the states became very upset about the mixed waste  
10 management and passed a federal law giving the state oversight  
11 over mixed waste. And that oversight was granted under RCRA.  
12 So, because we're a RCRA-authorized state, DTSC authorizes our  
13 RCRA program.

14 SENATOR PETRIS: So it's under state jurisdiction then?

15 MS. WILLIAMS: The state has the ability to say yes or no,  
16 to modify the plans, and to reject the plans. And this state has  
17 basically in this instance rubber-stamped all six of the -- all  
18 five of the plans. The sixth is still under review.

19 So, the state has an oversight role, although it is funded  
20 by DOE and it is a DOE project.

21 CHAIRMAN LOCKYER: Other questions?

22 Thank you.

23 MS. WILLIAMS: Thank you.

24 CHAIRMAN LOCKYER: Have we heard all testifiers, other  
25 than Mr. Huff?

26 Are there any issues that you haven't heard discussed  
27 before that you heard this afternoon, or are you familiar and  
28 prepared to comment on each of the matters that were discussed?

1 MR. HUFF: I think I can comment on each of the ones. I  
2 have anticipated some, and my staff has anticipated others.

3 It is true that --

4 CHAIRMAN LOCKYER: It seems to me that there's enough sort  
5 of specific allegations that a specific response is called for.

6 MR. HUFF: I think I can. I took some notes as I went  
7 through this.

8 I think it is true that some of the comments have not  
9 previously been communicated to me, and I would begin by saying  
10 that I do believe in open government. I think that my record at  
11 the Integrated Waste Management Board demonstrates that, where  
12 for four years, I sought to open up the Board's processes. And I  
13 think most people who interacted with the Waste Board during that  
14 time agree that the Board's processes did, in fact, become more  
15 open.

16 When I was Director of Finance, I took pride in sharing  
17 information as it became available with Members of both parties  
18 of both Houses. And I think that people who dealt with me then,  
19 from all stripes, would agree that it was as open a process as  
20 the Department of Finance could run.

21 So, I do believe in open government, and I take exception  
22 to those who would suggest that I practice anything other than  
23 that.

24 I don't know how to practice anything other than open  
25 government. I've worked for this government for 24 years. I  
26 worked for the Assembly for one year, for the Senate for ten. I  
27 point with pride at those years of service, and I continue to  
28 point with pride at them. I learned a lot from the people I



1 worked in the Legislature at that time.

2 The opposition to my confirmation, I think, can be  
3 categorized to some degree, and let me begin with the CEQA  
4 issues.

5 CEQA is a law that the Department of Toxics Substances  
6 Control had trouble implementing early in its history. And  
7 there's no denying that, and I think that you heard a number of  
8 people say that.

9 I think that you also heard at least some people say that  
10 we've gotten better. And the fact is that we have. And some of  
11 that wasn't my doing, but some of that has been a continuation of  
12 things under my watch that happened earlier.

13 One thing that happened in the early '90s was, the  
14 Department took steps to consolidate CEQA control functions in  
15 Sacramento, rather than allowing each of our regions to interpret  
16 and apply CEQA differently. There was a consistency problem. It  
17 doesn't exist now.

18 The Department follows CEQA process that begins with  
19 taking a look at a project. And a project generally will fall  
20 into one of three categories.

21 In some instances under the law, a full EIR is required;  
22 there's no question. Major projects, incinerators, those sorts  
23 of things, the law requires a full EIR.

24 Some projects will be exempt, and there are some court  
25 decisions and some categories where the project plain is exempt  
26 from CEQA.

27 Then we have the middle.

28 CHAIRMAN LOCKYER: What would it be?

1 MR. HUFF: For example, in a recent court decision, called  
2 the McGurk decision, it says that if you have a facility that has  
3 its permits, might have pre-dated CEQA, is operating today, comes  
4 forward for a permit renewal, if the circumstances of that  
5 facility haven't changed, they're exempt.

6 CHAIRMAN LOCKYER: So, the high desert incinerator, for  
7 example --

8 MR. HUFF: National Cement, it's a debatable point with  
9 regard to National Cement.

10 CHAIRMAN LOCKYER: Okay.

11 MR. HUFF: And again, that debate will take place, but --

12 CHAIRMAN LOCKYER: That's not necessarily in that bundle.

13 MR. HUFF: It's not necessarily in that bundle; it could  
14 be.

15 CHAIRMAN LOCKYER: Pardon me, you were going to say  
16 there's a third.

17 MR. HUFF: The third is the middle ground. There you  
18 begin with doing an initial study. The Department does the  
19 initial study. State law requires that.

20 The Department uses trained environmental scientists, and  
21 I must say that the educational level of the Department of Toxics  
22 Substances Control far exceeds any other department I've ever  
23 seen or worked with. They're bright people there. They're  
24 committed to protecting human health; they're committed to  
25 protecting the environment.

26 It begins with an initial study conducted by trained  
27 environmental scientists. They go through the Department's  
28 established policies and procedures. They implement statewide

1 guidelines. It's a process that they follow precisely.

2 From the initial study, one makes the determination as to  
3 whether there are any significant environmental impacts. If  
4 there are, then an EIR is indicated. If there aren't, then you  
5 will have a negative declaration, or perhaps a mitigated negative  
6 declaration, both of which are anticipated and authorized under  
7 the law.

8 Now, there has been some debate as to how often the  
9 Department uses mitigation, and how often we use negative  
10 declarations. And part of the answer to that debate is, the  
11 Department is requiring more full EIRs now than they used to be.  
12 We still do a lot of mitigated negative declarations. In fact,  
13 our permit standards and our requirements themselves act as  
14 mitigation factors with the facility. So, we do have negative  
15 declarations.

16 And in the PureEtch instance, we went forward with a  
17 negative declaration, and the court did order a very focused EIR.  
18 The focus was on catastrophic failure. In fact, the judge  
19 allowed as how we had covered everything else in the negative  
20 declaration, but the scenario of a catastrophic failure, he felt,  
21 needed a focused EIR. And that work will proceed.

22 And, in fact, I've instructed staff to incorporate into  
23 our policies the consideration of the judge's findings in this  
24 case.

25 As we continue with CEQA, as we continue to compile case  
26 law and experience, it naturally builds on itself, and we  
27 continue to evolve.

28 I, in fact, issued a memorandum to my Department just this



1 month, reaffirming the Department's commitment to compliance with  
2 CEQA, and stating that:

3 "It remains the policy of DTSC that all  
4 programs fully comply with the  
5 requirements of CEQA and the policy,  
6 procedure and guidance documents prepared  
7 by the Office of Program Audits and  
8 Environmental Analysis."

9 That is our policy.

10 In response to expressions of legislative concern,  
11 particularly in the Budget Act of 1994-95, where concern about  
12 negative declarations was expressed, the Department has engaged  
13 in an internal review of our CEQA process. We've contacted  
14 people who deal with us, including some who have testified before  
15 you today.

16 The report is in its draft stages now. It will be  
17 released next month. But the report indicates that there are  
18 some areas where the Department can make some further changes in  
19 its CEQA process. And I can tell you that we will be moving  
20 forward on those.

21 They are such as adopting the latest version of the  
22 Resources Agency checklist when we do an initial study. We're  
23 using an older version, and we should be using the newer version,  
24 is one of the recommendations.

25 An area of controversy is establishment of a baseline for  
26 CEQA studies: just exactly where do you stop, where do you start  
27 for your CEQA study, and that's an issue that we should adopt a  
28 policy on. We'll have to work our way through that one, but we

1 will be doing that.

2 So, there's some areas where the Department can continue  
3 to improve its CEQA application.

4 But I would suggest to you that we've come a long, long  
5 way. We're continuing to make progress, and it is our policy to  
6 make progress.

7 So, that's the CEQA case in a nutshell, I think.

8 With regard to South Hampton, it would have been very easy  
9 for the developer, I think, to also be here complaining about the  
10 Department.

11 In South Hampton, you have a terrible situation: homes on  
12 top of what used to be a landfill. And I think we all can  
13 identify that and say that, "There but for the grace of God," you  
14 know. It's a terrible situation.

15 I can tell you that my staff has found this situation not  
16 only a terrible situation, but very difficult to deal with the  
17 developer involved. It took some time to reach a consent  
18 agreement with this developer, but we did. And we reached a  
19 consent agreement with the developer in the spring of this year,  
20 whereby we then can require this developer to clean up the mess.

21 Since we don't have a whole lot of state cleanup money,  
22 this is, I think, the most appropriate remedy, is to require,  
23 with the Department's oversight, require the developer to clean  
24 up the mess. And we reached, as I said, a consent agreement with  
25 the developer in the spring.

26 Now, our mission is protection of human health and the  
27 environment, and that's what we're attempting to do at South  
28 Hampton.

1           At South Hampton, the full nature of the contamination,  
2 the location, the depths, is still not known. There's still  
3 investigative work to be done. There are still endangerment  
4 studies to be done. This is what we are requiring the developer  
5 to do now.

6           In some instances, we've angered the developer because he  
7 thinks that we're on the side of the residents.

8           SENATOR AYALA: On that point, do they allow developers to  
9 develop next to a site?

10          MR. HUFF: Well, in this instance, a developer was allowed  
11 to clean up a site --

12          SENATOR AYALA: He cleaned it up before he developed it.

13          MR. HUFF: Allegedly.

14          SENATOR AYALA: Before or after he developed it?

15          MR. HUFF: The problem was -- before he developed it. But  
16 the problem was that it wasn't really cleaned up.

17          SENATOR AYALA: It wasn't cleaned up by the developer?

18          MR. HUFF: That's right.

19          SENATOR AYALA: Okay.

20          MR. HUFF: So, the first time we angered the developer was  
21 in the summer, when we went and ordered that some of the areas  
22 involved be fenced and posted. The developer thought we were  
23 siding with the residents, prejudicing his ability to defend  
24 himself against their lawsuit.

25          Most recently, we've angered the developer by rejecting a  
26 preliminary endangerment study as being poorly done, and then  
27 rejecting an investigation that, likewise, we thought did not  
28 meet our requirements.



1       So, we've got both sides angry at us in South Hampton, and  
2 I'm sorry for that.

3       We're trying to forge ahead, again, trying to get the  
4 place cleaned up, because nothing has -- nothing will be  
5 happening without some effort towards forcing the developer to do  
6 something. But at the same time, there's this major lawsuit over  
7 civil damages that's hanging over everything.

8       I can guarantee you, my staff have no love lost for the  
9 developer. And I can guarantee you that my staff is a committed  
10 staff toward cleaning up the problem at South Hampton.

11       CHAIRMAN LOCKYER: One of the points that I seem to recall  
12 them making, although it's very hard because you kind of get into  
13 all the detail, and he-said-she-said, and it's sort of hard to  
14 follow all those things if you weren't there for the course of  
15 the discussion, but there seemed to be a claim that the  
16 representatives from the Department kept getting rotated in and  
17 out, and lack of expertise and follow-up as a consequence.

18       Do you have any observations about that?

19       MR. HUFF: There has been some I would say evolution of  
20 staff. We have taken care that when someone changes an  
21 assignment, there's a phase-in and an overlap.

22       We have, however, several major areas and a limited staff,  
23 and we have to make sure that, for example, if we have someone  
24 who is expert in a certain aspect of hydrogeology, and they're  
25 not as required in one area, that they can transition over into  
26 another area, such as Stringfellow.

27       Which is a good segue, if you have no other South Hampton  
28 questions.

1 CHAIRMAN LOCKYER: Stringfellow.

2 MR. HUFF: Ms. Williams characterized Stringfellow. I'd  
3 characterize it with just one difference.

4 The reason the state is 100 percent liable is that in the  
5 beginning, when Stringfellow was being sited, the Water Resources  
6 Control Board then actively promoted the site. It was believed  
7 -- Stringfellow's located northwest of Riverside, California, in  
8 the hills. You fly over it as you fly into Ontario Airport.  
9 It's in a bowl.

10 It was said to be impenetrable granite, rock.

11 CHAIRMAN LOCKYER: When was that, what year?

12 MR. HUFF: In the late '50s, early '60s.

13 CHAIRMAN LOCKYER: That the state was an advocate? When  
14 the state was actually an advocate --

15 FROM THE AUDIENCE: The state was an advocate.

16 CHAIRMAN LOCKYER: What years?

17 FROM THE AUDIENCE: '50s, '60s, around there.

18 CHAIRMAN LOCKYER: Pat Brown.

19 MR. HUFF: The site operated from '56 to '72.

20 CHAIRMAN LOCKYER: That would have been --

21 MR. HUFF: Thirty-four million gallons of waste.

22 CHAIRMAN LOCKYER: No, actually for the siting, if it  
23 started operating in '56, there must have been some work then in  
24 the earlier '50s. I guess it would be Goody Knight.

25 MR. HUFF: Thirty-four million gallons of waste: acid  
26 waste, pesticide manufacturing waste, metal finishing waste. All  
27 this stuff placed in unlined ponds.

28 In the early '80s, all the ponds were drained. It went on

1 the Federal Superfund list in '81.

2 Court cases have followed, and because of the state's role  
3 in promoting, that's why we're liable. And that's being  
4 appealed.

5 It's also true that at that period of time, the state had  
6 liability insurance.

7 CHAIRMAN LOCKYER: They had some insurance they could go  
8 to?

9 MR. HUFF: You see, now days, insurance carriers write a  
10 clause that --

11 CHAIRMAN LOCKYER: Right, that excludes.

12 MR. HUFF: -- that excludes us. They didn't then.

13 We will go to trial --

14 CHAIRMAN LOCKYER: So that carrier might be responsible  
15 for the 850 million, or whatever?

16 MR. HUFF: I think that's a little high, but yes. We will  
17 go to trial with the insurance carriers --

18 CHAIRMAN LOCKYER: Is it one or a bunch?

19 MR. HUFF: The first digit's probably a four or a five.

20 CHAIRMAN LOCKYER: No, no. I mean one insurance carrier?

21 MR. HUFF: Oh, it's a bunch.

22 CHAIRMAN LOCKYER: A bunch of them?

23 MR. HUFF: It a whole bunch. And you know how they do  
24 this business with --

25 CHAIRMAN LOCKYER: Excess carriage.

26 MR. HUFF: Yeah, all that stuff.

27 The depositions have already started in preparation for  
28 the trial. The trial will probably be sometime in '97 in



1 Superior Court in Riverside County. So, that's the Stringfellow  
2 tale.

3 But I don't think that we're repeating Stringfellow, is my  
4 point.

5 CHAIRMAN LOCKYER: Well, that would be the important thing  
6 for us.

7 MR. HUFF: Yes, because these places are no longer  
8 unlined. Liquids have to be solidified.

9 The process today is so incredibly different. It's like  
10 the Wright Brothers' airplane compared to the Space Shuttle;  
11 compared to Stringfellow in '56 and what's required in a Class I  
12 facility now.

13 So, I don't think that we're repeating the mistake. I  
14 hope we learn from our mistakes.

15 Environmental racism and environmental justice. I don't  
16 know that I need to say this, but after 24 years, this is the  
17 first time that it's been suggested that I condone or even  
18 promote such a policy.

19 The fact, I think, is that with regard specifically to  
20 Statewide Environmental Services, they're a business. They're a  
21 business that my Department has inspected, found violations, and  
22 fined on more than one occasion.

23 But they're a business that, right now, have a land use --  
24 a valid land use permit from the County of Los Angeles, and have  
25 been grandfathered in to interim status under state law. They're  
26 now coming forward for a permit.

27 We have asked our lawyers in the Department, based on the  
28 inspections, based on the track record of SES, can we just say to

1 the company: don't even bother; don't come to our door. And the  
2 Department's lawyers say that we'd have a serious due process  
3 problem if we did that.

4 I would suggest to you that if someone comes forward with  
5 a permit, we need to go through the process. It's one of the  
6 things I've learned in 24 years, is that the process is very  
7 important. Very important for it to be open, very important for  
8 it to be fair, but very important that government follows the  
9 process.

10 So, I would suggest to you that we really are compelled to  
11 follow the process.

12 One thing that the Department did do is that it is  
13 requiring a supplemental EIR. And the focus of the supplemental  
14 EIR is alternative locations.

15 Now, I was disturbed to hear from Mr. Shabazz that he  
16 found the process of scoping that supplemental EIR to be  
17 deficient. And I'm going to look into that. I'll be glad to  
18 report the results to the Committee.

19 But it truly was a response to the concerns of the  
20 community, is to require a supplemental EIR and focus that  
21 supplemental EIR on alternative locations of the facility.

22 The fact of the matter is that the NRDC has entered into  
23 litigation over the location of that facility. And named in that  
24 location [sic] are the facility and the County of Los Angeles,  
25 not the Department of Toxics Substances Control.

26 I do believe that it is a local land use decision.

27 Our Department, notwithstanding some of the comments  
28 about our public participation, our Department has, I believe,

1 the model public participation program in this country. Maybe we  
2 can make it better. I'm sure we can always make things better.  
3 But we do.

4 We've been considered the model for US EPA. Not only  
5 public hearings, but we engage in not only public hearings which  
6 are required by California law and regulations, but also public  
7 workshops that precede the hearings.

8 Although not required anywhere in California regulation or  
9 law, we do translate essential information, our fact sheets, into  
10 the appropriate language.

11 We do have, of course, the required public hearings for  
12 permits and the whole open process. We've applied this process  
13 to both the California-only, the so-called California-only  
14 business, and the RCRA business.

15 So, I believe that our public process is geared to making  
16 sure that no one wakes up with suddenly, to their surprise, a  
17 toxic waste facility across the street from themselves.

18 Like I said, you can always communicate better. We can  
19 always make strides, too, in public participation.

20 SENATOR PETRIS: On that point, Mr. Chairman.

21 Did you have any knowledge of this fellow that was hauled  
22 away to jail because he was speaking in another language or  
23 offered a paper?

24 MR. HUFF: I'm aware -- I wasn't aware of that instance.  
25 I have heard of Mr. Angel before.

26 SENATOR PETRIS: Have there been other persons similarly  
27 treated?

28 MR. HUFF: Not by us. Of course, that was by the Kern



1 County Board of Supervisors. That was the local board.

2 And again, you do have local land use issues, and how  
3 local governments determine local land use issues, I'm not going  
4 to answer for.

5 SENATOR PETRIS: Well, that's right. You have enough to  
6 worry about in your shop. I understand that.

7 MR. HUFF: Yeah, I don't get to do local land use. I'm  
8 not sure I want to.

9 CHAIRMAN LOCKYER: It was the Kern County Board, so they  
10 were probably busy with UFO sightings.

11 MR. HUFF: So, I've done environmental justice, CEQA,  
12 South Hampton.

13 I just want to say that in one specific instance, the  
14 meeting with the South Hampton people, they met with my Chief  
15 Deputy. There was a scheduling conflict. It wasn't like I was  
16 ducking them. I'd be glad to meet with them.

17 I told Mr. Shabazz that I would meet with him the next  
18 time I'm in Southern California. I'll go to SES with him.

19 I don't mind meeting with people.

20 Finance people making technical decisions, that's not  
21 true.

22 We have the best trained environmental scientists in the  
23 State of California working for the Department. A lot of people  
24 with Ph.D.s; a lot of people very committed to the environment.

25 They wouldn't stomach nontechnical people making  
26 decisions, and they shouldn't.

27 My responsibility is to make sure that the resources of  
28 the Department are marshaled and allocated appropriately. And

1 that California law is implemented and applied appropriately.

2 I'm not going to try to distinguish between one molecule  
3 of dioxin and another.

4 SENATOR PETRIS: On that point, we've run into this  
5 problem before in another context. I, personally, in the  
6 pesticide field related to agriculture.

7 We had several hearings on just what happens in the  
8 department. And I was shocked to learn that although the state  
9 has, as you said, some of the top scientists in that field, and  
10 they study a problem objectively, and they have to come to some  
11 conclusion as to whether a particular pesticide should be  
12 registered or should be banned because of its toxicity, and so  
13 forth.

14 And the scientists would come to a conclusion on some of  
15 them that they shouldn't be registered. Where upon, their  
16 political overseers in the department overruled them, and ordered  
17 that they be registered.

18 This is way back. It was under Deukmejian's  
19 administration. I'm sure it's happened at other times, too.

20 I've never seen an attack on the integrity of the  
21 scientists who work for the state over the years. Everybody  
22 agrees they've been very competent, highly trained, objective,  
23 and full of integrity.

24 But they don't make the final decisions. All they do is  
25 recommend. And it's up to the agency head, or some steps below  
26 the agency head, to decide whether that recommendation's going to  
27 be followed or not.

28 MR. HUFF: I have never overruled, in one year at the

1 Department of Toxics, and four years at the Waste Board, I've  
2 never overruled and substituted my judgment for a scientific  
3 finding.

4 Very frequently, I will find that scientists at my  
5 Department will take their science as far as it goes and say, "At  
6 this point it becomes a policy. How much risk do you want to  
7 accept in society from this?" But that is a policy call.

8 But I won't tell them to say there is no risk. I will not  
9 substitute their -- the risk number that they generate. I will  
10 not make it different.

11 When they reach the point they say, "This is your policy  
12 choice," then I will exercise --

13 SENATOR PETRIS: That's the way it should be done. But in  
14 those instances, that's not the way it happened. This is a long  
15 time ago, but when we talk about the scientists, I want to come  
16 to their defense because they've been straight, straight-forward,  
17 I should say.

18 MR. HUFF: With regard to the dioxin study, DTSC is  
19 commenting to the feds on the dioxin study, along with Cal-EPA  
20 agencies through the Office of Environmental Health Hazard  
21 Assessment. So, we are participating in that. We are commenting  
22 back to the feds.

23 Let's see, any other specifics?

24 The regulatory structure update, which Ms. Jane Williams  
25 mentioned.

26 The thrust of the regulatory structure update is not to  
27 deregulate California only. There may be some sentiment to do  
28 that in the business community, there may be a lot of sentiment



1 to do that in the business community, and there may be some  
2 sentiment to do that in some places politically.

3 I have publicly stated that in my view, California is not  
4 Kansas. We are unique. We have unique circumstances here that  
5 require us to ask the question: what is necessary to protect  
6 California, and the public health of Californians and the  
7 environment of California? We have 16 different microclimates.  
8 We have economic activities that take place no other place in the  
9 world.

10 We are unique. We have concentrations of people and  
11 numbers of people that are far different than other places in  
12 this country.

13 We need to ask the question relative to California, what  
14 is necessary to protect California's health and California's  
15 environment.

16 But at the same time, there are regulations that get in  
17 our way that we've created. I'll give you an example.

18 The utility industry has to clean its boilers from time to  
19 time, and the liquid that it uses to clean the boilers has been  
20 characterized, when they're finished, as hazardous, which means,  
21 then, that they have to go through all the hazardous waste  
22 process, manifest it, get it properly disposed of, et cetera.

23 Yet, they've found that it is a useful substance in  
24 abating hydrogen sulfide at PG&E at the Geysers.

25 Now, it would make sense environmentally to use that spent  
26 boiler cleaning fluid, to take it to the Geysers and abate  
27 hydrogen sulfide, which kills people, or could.

28 But because of our regulations classifying it as

1 hazardous, it becomes economically prohibitive to do that, so  
2 that use virgin chemicals to combat the hydrogen sulfide, and  
3 dispose of this substance that otherwise could be used.

4 In our regulatory structure update, we're going to change  
5 that. It'll be economical to use, recycle, if you will, this  
6 substance that they take out of cleaning their boilers, and it  
7 will achieve the goal of abating hydrogen sulfide, and no new  
8 virgin chemicals will be used. It's a plus for the environment,  
9 and it's a plus economically.

10 It is not always a question of profit or pollute.  
11 Sometimes, good economics is pollution prevention.

12 Those are the sorts of regulations we are trying to  
13 promote, and we are very active, and are taking a very active  
14 interest in pollution prevention.

15 The total amount of hazardous waste in this state has gone  
16 down. Notwithstanding over the decades increase in economic  
17 activity, increase in population, the total amount of hazardous  
18 waste has gone down.

19 That's partly the result of the SB 14 process, partly a  
20 result of people realizing, corporations realizing, that  
21 hazardous materials, hazardous substances are an economic drain.  
22 They cost a lot of money to manage and to dispose of.

23 So, I don't think that it's necessarily an issue of profit  
24 or pollution. I think that, properly structured, our regulations  
25 can foster better environmental compliance, and certainly more  
26 understandable and easier environmental compliance. And that's  
27 what we're looking for.

28 Did I miss something?

1           The initial studies at South Hampton. The initial studies  
2 considered all the samples needed to make a determination  
3 relative to the negative declaration. The negative declaration  
4 was an either/or situation. If the stuff was a Class I waste,  
5 then it had to go to the Class I landfill so there's no  
6 environmental -- and if it's nonhazardous, then it goes to a  
7 managed waste site.

8           The removal action negative declaration was prepared by  
9 one of our top people in the Department and with cooperation from  
10 Jody Sparks, who was a consultant with the City of Benicia. So,  
11 I'm a little confused about that argument. It don't think it's  
12 correct.

13           The Indian trial I.D. number, that one I can't completely  
14 answer. That's the one.

15           But as I understand it, any permit on tribal land would be  
16 under a joint federal-tribal agreement, joint regs., et cetera.

17           My staff knows -- my head of permitting knows of no such  
18 permit.

19           However, an I.D. number might be granted for a generator,  
20 someone who produces and has to take the stuff somewhere.

21           But I don't have a complete answer on that one issue.

22           CHAIRMAN LOCKYER: Are there questions additionally from  
23 Members?

24           I'd recommend that, perhaps, you review the transcript to  
25 see if there are cases where someone felt that they were unable  
26 to get information, or there'd been some inadequate follow-up on  
27 requests for meetings, or whatever. Perhaps just go through the  
28 document to see if there's ways to close those.



1 MR. HUFF: I think that's a great idea. I'd be glad to do  
2 that.

3 CHAIRMAN LOCKYER: Is there any plan that we should learn  
4 of that kind of expedites the whole process with the Department,  
5 whether it's cleanup or permitting?

6 There just seems to be a lot of lawsuits, delay, mountains  
7 of paperwork. You know, it's just hard for anyone to understand  
8 even what goes on there.

9 What's your general view?

10 MR. HUFF: I think increasingly -- well, there have been  
11 some legislative changes, first of all. Tiered permitting, which  
12 is just about implemented now, and that brought a lot more  
13 facilities actually into the regulatory net but at a much lower  
14 level.

15 And the SB 1082, which we are now implementing, has  
16 created consolidated unified program agencies, we call them  
17 CUPAs, and they will be handling a lot of the lower tiers, and a  
18 lot of -- at the local level. And that consolidates not just  
19 toxics programs, but programs from a number of other boards and  
20 departments, Water Board and others, and so that will be a more  
21 efficient process under the CUPAs, so there's one.

22 On the cleanup side, the Department -- and again, I think  
23 we're a leader here in something called "brown fields". Brown  
24 fields are largely urban areas that have some contamination.  
25 They may be stabilized; they may be that lot downtown that has a  
26 fence around it, okay.

27 What we're working on and what we're implementing are  
28 cleanups of those areas wherein the prospective purchaser is held

1 harmless, so that it's an inducement for people to come in and  
2 develop the downtown, the brown field, rather than to go out to  
3 the suburbs and put the plant out there on the green field.

4 We've moved quite a bit into the brown fields. We have  
5 brown fields in Oakland. We're working with the City of Oakland  
6 on creating a cleanup standard that's geographic in nature so  
7 that we can proceed with brown fields there.

8 We have voluntary cleanups, which also have been very,  
9 very popular and positive. We have a couple of voluntary  
10 cleanups, one in Emeryville, wherein we're working cooperatively  
11 with the City to clean up, in a nonadversarial setting, property  
12 so it can be developed and used productively.

13 So, we're doing those things, and I think that's the  
14 future, is the sort of voluntary cooperative arrangements, and  
15 try to avoid some of the chase-down the people and hit them over  
16 the head until they agree to clean it up situation.

17 Of course, we're always going to have those. We have a  
18 large number of sites that are contaminated, and we're searching  
19 for responsible parties.

20 But there are a lot of other instances where we can really  
21 get to business much more quickly when we have a fully developed  
22 brown fields program, and a voluntary cleanup program where we  
23 can get property handled quickly.

24 I think that one other aspect of the future is CIRCLA.  
25 Congress is in the business, has been for a year and maybe  
26 they'll finally complete it, of reauthorizing the Superfund.  
27 When they do that, it's going to dramatically change Superfund,  
28 and I'm not sure how it's going to change Superfund yet, but I'll

1 tell you, I bet that the state has more responsibility. I mean,  
2 the words that Congress are debating are authorization or  
3 delegation, both of which means that the states will have more  
4 responsibilities with regard to sites.

5 So, the Superfund program, I think, will change. I think  
6 that it probably shifts, decentralizes, some of the work from US  
7 EPA to the states.

8 At the same time, you see, we're shifting some of our  
9 lower level stuff via the CUPAs to local governments. I see that  
10 as a general trend in the programs.

11 And then, like I said, on the cleanup side, the voluntary  
12 cleanups and the brown fields, we have one going on in Ontario.  
13 There's going to be a race track out at the Kaiser Steel Mill.  
14 That is the result of the Department of Toxics Substances Control  
15 working with Kaiser Steel to --

16 SENATOR AYALA: The new race track?

17 MR. HUFF: New race track at Fontana.

18 That's the result of the Department working with Kaiser  
19 Steel to come to an agreement on the cleanup of one of the  
20 portions of that 1100 acres there.

21 It's not going to be the whole thing. The race track  
22 doesn't need 1100 acres. But it will be, I think, a two-mile  
23 tri-oval. And they're going to run a race there, Pensky, in '97.

24 So, those are the sorts of things that I think are going  
25 to be the things that the Department does increasingly in the  
26 future.

27 CHAIRMAN LOCKYER: Are there other questions from Members  
28 of the panel?



1           If there aren't any, it's probably time to ask what's your  
2 pleasure with respect to the --

3           SENATOR BEVERLY: Move we recommend confirmation.

4           CHAIRMAN LOCKYER: We have a motion to that effect.

5           Is there any discussion or comment? Call the roll.

6           SECRETARY WEBB: Senator Ayala.

7           SENATOR AYALA: Aye.

8           SECRETARY WEBB: Ayala Aye. Senator Lewis.

9           SENATOR LEWIS: Aye.

10          SECRETARY WEBB: Lewis Aye. Senator Petris.

11          SENATOR PETRIS: Aye.

12          SECRETARY WEBB: Petris Aye. Senator Beverly.

13          SENATOR BEVERLY: Aye.

14          SECRETARY WEBB: Senator Lockyer.

15          CHAIRMAN LOCKYER: Aye.

16          SECRETARY WEBB: Lockyer Aye. Five to zero.

17          CHAIRMAN LOCKYER: I'm going to recommend, Mr. Huff, that  
18 we hold the matter on the Floor, since we have, I guess, two  
19 weeks or so, so that we'll have an opportunity to go through some  
20 of the specific complaints about negative declarations and  
21 Departmental responsiveness prior to bringing up the matter for a  
22 final vote.

23          MR. HUFF: Certainly. I'd be glad to participate with you  
24 in that.

25          May I inquire as to, perhaps, when the transcript might be  
26 available?

27          CHAIRMAN LOCKYER: Pretty soon. Soon. We taped that  
28 where we've, perhaps, not had our reporter here.

1 I'd also like to thank those who had concerns and  
2 expressed those. I think it's constructive for people to do  
3 that.

4 You've noticed, I'm sure, that there is a presumption that  
5 runs in favor of gubernatorial appointees, and particularly one  
6 that we've worked with for many, many years and found to be  
7 competent and fair.

8 But you have some complaints that need to be looked into  
9 further, and I hope that we can assist in doing that in a  
10 constructive way.

11 Thank you, Mr. Huff.

12 MR. HUFF: Thank you, Mr. Chairman.

13 SENATOR BEVERLY: Would you lift the call on the other  
14 appointees?

15 CHAIRMAN LOCKYER: Yes. We have Mr. Frazee on call. Call  
16 the absentees.

17 SECRETARY WEBB: Senator Beverly.

18 SENATOR BEVERLY: Aye.

19 SECRETARY WEBB: Beverly Aye. Senator Lockyer.

20 CHAIRMAN LOCKYER: Aye.

21 SECRETARY WEBB: Lockyer Aye. Five to zero.

22 [Thereupon the Committee acted  
23 on legislative items.]

24 CHAIRMAN LOCKYER: Mr. Nagle.

25 Let me ask Members if any of you in reviewing your  
26 materials have found that there are reasons to ask for testimony  
27 of Mr. Nagle, or are you willing to either confirm or would you  
28 wish to postpone?  
29

1 SENATOR BEVERLY: There's no opposition.

2 CHAIRMAN LOCKYER: No, there's no opposition recorded.

3 Those of us who worked with him in his EDD life have found  
4 him to be responsive and competent.

5 There are a number of issues in our material that really  
6 are questions that would be fairer to put to the Governor rather  
7 than a deputy who has to kind of say what's predictable if you'  
8 ask those questions, you know, in defense of the welfare  
9 proposals and other such matters.

10 But I'll defer to the Committee, if you're ready --

11 SENATOR LEWIS: Move confirmation.

12 CHAIRMAN LOCKYER: -- if you're ready to vote on that this  
13 evening.

14 SENATOR BEVERLY: Among his supporters is Senator Patrick  
15 Johnston and Jack Henning.

16 CHAIRMAN LOCKYER: Yes, I noticed there was a range of  
17 support of various sorts.

18 Call the roll.

19 SECRETARY WEBB: Senator Ayala.

20 SENATOR AYALA: Aye.

21 SECRETARY WEBB: Ayala Aye. Senator Lewis.

22 SENATOR LEWIS: Aye.

23 SECRETARY WEBB: Lewis Aye. Senator Petris.

24 SENATOR PETRIS: Aye.

25 SECRETARY WEBB: Petris Aye. Senator Beverly.

26 SENATOR BEVERLY: Aye.

27 SECRETARY WEBB: Senator Lockyer.

28 CHAIRMAN LOCKYER: Aye.



1 SECRETARY WEBB: Lockyer Aye. Five to zero.

2 CHAIRMAN LOCKYER: Good luck, and sorry you had to wait,  
3 but now at least you know what you avoided.

4 MR. NAGLE: I appreciate that.

5 [Thereupon this portion of the  
6 Senate Rules Committee hearing  
7 was terminated at approximately  
8 7:25 P.M.]

9 --oo0oo--  
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CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 24<sup>th</sup> day of January, 1996.

  
EVELYN J. MIZAK  
Shorthand Reporter





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APPEARANCESMEMBERS PRESENT

1 SENATOR WILLIAM LOCKYER, Chair  
2  
3 SENATOR ROBERT BEVERLY, Vice Chair  
4  
5 SENATOR RUBEN AYALA  
6  
7 SENATOR JOHN LEWIS  
8  
9 SENATOR NICHOLAS PETRIS

STAFF PRESENT

10 GREG SCHMIDT, Executive Officer  
11 PAT WEBB, Committee Secretary  
12 RICK ROLLENS, Consultant on Bill Referrals  
13 NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

14 MICHAEL M. JOHNSON, Member  
15 Fair Employment and Housing Commission  
16 EDWARD G. JORDAN, Member  
17 California Transportation Commission  
18 SENATOR QUENTIN KOPP  
19  
20 RON D. ROBERTS, Member  
21 State Air Resources Board  
22 SENATOR STEVE PEACE  
23  
24 MARK BAUTE  
25 California Renewable Fuels Industry  
26  
27 JAMES W. SILVA, Member  
28 State Air Resources Board  
PETER GREEN  
City Councilman  
City of Huntington Beach  
ALAN TRUDELL  
Garden Grove Unified School District  
ADRIANNE MORRISON, Executive Director  
Amigos de Bolsa Chica





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P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN LOCKYER: Gubernatorial appointees. Our first one is Michael Johnson, Fair Employment and Housing Commission.

Good afternoon.

MR. JOHNSON: Good afternoon. I'm Mike Johnson.

CHAIRMAN LOCKYER: Would you have any comments you'd like to open with, sir?

MR. JOHNSON: Only if the Committee is interested in some. That's a dangerous invitation to make to a lawyer.

CHAIRMAN LOCKYER: Well?

MR. JOHNSON: I obviously believe I'm well qualified. I have served one term on the Fair Employment and Housing Commission before.

CHAIRMAN LOCKYER: Was it a full term?

MR. JOHNSON: Yes, it was. I'm state chair of that section. I practiced in that area for more than twenty years in the area of labor employment law and civil rights. I take a very active interest in this area, and I would be very pleased to serve again.

CHAIRMAN LOCKYER: What have you learned from spending five years doing this?

MR. JOHNSON: My prior term?

CHAIRMAN LOCKYER: Yes.

MR. JOHNSON: I believe that the Fair Employment and Housing Commission serves a valuable function in the state, but it is an increasingly weak one which I believe was a disappointment.

CHAIRMAN LOCKYER: That's because of --



1 MR. JOHNSON: I believe it is in part the structure of  
2 the administrative agencies. At the time that I served before was  
3 a period in which the Supreme Court decisions in Dynamed and  
4 Peralta took away many of the powers that the Commission had.

5 I think that the effect of that has been to drive those  
6 who have complaints into the court system and away from the  
7 administrative system. And I personally believe that is a bad  
8 result.

9 I believe the administrataive system provides a more  
10 prompt, a less expensive remedy for those who have a complaint. I  
11 think it's to the value of those whose rights have been deprived  
12 and to those who are on the other side who are employers, because  
13 it is a more efficient way of resolving disputes than the court  
14 system.

15 I know that there have been changes in the legislation  
16 since I left the Commission in 1991 that has remedied some of  
17 those things, but I believe it has not yet come back to the point  
18 that it was in 1987, when I first began.

19 CHAIRMAN LOCKYER: Are there other questions from  
20 Members.

21 I note in our file it indicates that the dismissal rate  
22 is about 43 percent. Have you had an opportunity to look at the  
23 bundle that gets attention versus dismissals to see what the  
24 dismissed batch looks like?

25 MR. JOHNSON: Only on a statistical level. One of the  
26 things that I was alluding to earlier, the -- unlike most  
27 administrative agencies, like the National Labor Relations Board,  
28 the Equal Employment Opportunity Commission, or the Agricultural

1 Relations Board in California, the Fair Employment and Housing  
2 Commission really has no direct oversight over the Department of  
3 Fair Employment and Housing. They're independent agencies.

4 The Commission that I have been appointed to is basically  
5 a decision making commission, and one which is a public forum for  
6 things such as hate violence and other civil rights issues.

7 We really don't have the ability to tell the Department  
8 what to do with the complaints that it receives. We receive  
9 statistical information which I think is interesting, but --

10 CHAIRMAN LOCKYER: You don't have any appellate role at  
11 all?

12 MR. JOHNSON: Filing amicus briefs, yes.

13 CHAIRMAN LOCKYER: But not on individual cases.

14 MR. JOHNSON: Yes, we decide individuals cases, and  
15 anyone who's dissatisfied with that result can challenge it by  
16 Writ of Mandate, and then the Commission appears usually through  
17 the Attorney General to argue the case.

18 CHAIRMAN LOCKYER: Has the affirmative action debate been  
19 played out before your forum or not?

20 MR. JOHNSON: I've been on the Commission since February,  
21 that's when I was appointed, and I've been serving since then.

22 We have begun a public forum on the issue of affirmative  
23 action. We began with a presentation by the representative of the  
24 black leaders business leaders group and then received some  
25 further input from the other side against affirmative action from  
26 an academic group.

27 We have plans to incorporate that into our hearings to  
28 really listen, to provide those who have something positive on

1 either side of the issue to say in a public forum. But we have  
2 no control over affirmative action in the sense that we have any  
3 direction over the government contract programs, and certainly  
4 college admissions and that sort of thing. It's just more of a  
5 discussion.

6 CHAIRMAN LOCKYER: You've done informational  
7 forums?

8 MR. JOHNSON: Correct.

9 CHAIRMAN LOCKYER: Senator Ayala.

10 SENATOR AYALA: Yes.

11 Mr. Johnson, as a general rule, are men and women getting  
12 equal pay for equal work in California today, or is that a  
13 significant problem today in California?

14 MR. JOHNSON: Well, that is the law. That is certainly  
15 what the law requires.

16 SENATOR AYALA: I know what the law is, but I'm asking  
17 you, is it a problem?

18 MR. JOHNSON: The statistics show that women are paid  
19 less than men in the aggregate.

20 Yes, I certainly do not agree with that result.

21 SENATOR AYALA: Is your Commission able to handle that  
22 kind of a problem? Do you have the responsibility of looking at  
23 those issues?

24 MR. JOHNSON: Our Commission decides individual  
25 complaints that the Department of Fair Employment and Housing, in  
26 its discretion, decides to prosecute and then take to a hearing  
27 before our Commission. We have no independent ability under the  
28 law to really make a direct change on that.



1           We certainly have the ability to conduct a public forum  
2 if we choose to do so. The resources that are given to that  
3 Commission allow us to meet as a Commission once every other  
4 month, so we have to be fairly selective about which issues we  
5 pursue. That has not been one of them.

6           SENATOR AYALA: You're telling us that that issue still  
7 remains a significant problem in California, where women are paid  
8 less than men for same kind of work?

9           MR. JOHNSON: I believe that statistically that is the  
10 case, and that is a problem, and it has not been one that our  
11 Commission has been able --

12          SENATOR AYALA: Are you commissioned to do something  
13 about that?

14          MR. JOHNSON: We could have a public hearing to discuss  
15 it.

16          SENATOR AYALA: If you do that, can you then allow us to  
17 introduce legislation to try to correct it? Would that be a  
18 possibility?

19          MR. JOHNSON: Yes. I can give you an example of  
20 something that was done when I was a Commissioner that I took a  
21 very active interest in.

22               We conducted hearings on the effect of the Immigration  
23 Reform and Control Act as it pertained to California. We issued a  
24 report, a very extensive report, in 1989 that discussed that. And  
25 that provided a springboard for discussion in the Legislature and  
26 in the federal level as to the real impact of that law in  
27 California.

28               We could do the same on that issue that you've identified

1 or any other,

2 SENATOR AYALA: You could, but will you?

3 MR. JOHNSON: If asked. I'm one of seven.

4 SENATOR AYALA: I'd like to hear more about that at some  
5 other time, but for now I'll just pass.

6 CHAIRMAN LOCKYER: Other questions? Senator Lewis.

7 SENATOR LEWIS: Just following up on Senator Ayala's  
8 question, isn't it also true that the pay gap is lessening?

9 MR. JOHNSON: I believe it is. It's an issue that I've  
10 taken some personal interest in and have studied. I think it is  
11 -- this may reflect my -- the conclusions -- I think it's a much  
12 more complex issue than is often reflected.

13 I personally believe that legislative measures, such as  
14 the Family and Medical Leave Act, which allows women to enter and  
15 leave the workplace without being penalized, has done a great deal  
16 to close that gap, but it still exists. There is still a  
17 differential. I think the reasons for that are often more  
18 complex.

19 SENATOR LEWIS: One of the reasons might be longevity in  
20 the workplace?

21 MR. JOHNSON: Longevity in the workplace, entering and  
22 leaving the workplace, being penalized when one enters and leaves  
23 the workplace are many of the economic reasons that I have seen.

24 And I believe that, as I said, measures such as the  
25 Family and Medical Leave Act, and the California counterpart of  
26 that, have been effective to address some of the root causes.

27 CHAIRMAN LOCKYER: Is there someone present that would  
28 wish to make any comment on the appointment?

1 What's the pleasure of the Committee?

2 SENATOR BEVERLY: Move we recommend confirmation.

3 CHAIRMAN LOCKYER: We have a motion by Senator Beverly.  
4 If you will call the roll on that recommendation.

5 SECRETARY WEBB: Senator Ayala.

6 SENATOR AYALA: Aye.

7 SECRETARY WEBB: Ayala aye. Senator Lewis.

8 SENATOR LEWIS: Aye.

9 SECRETARY WEBB: Lewis aye. Senator Petris.

10 SENATOR PETRIS: Aye.

11 SECRETARY WEBB: Petris aye. Senator Beverly.

12 SENATOR BEVERLY: Aye.

13 SECRETARY WEBB: Beverly aye. Senator Lockyer.

14 CHAIRMAN LOCKYER: Aye.

15 SECRETARY WEBB: Lockyer aye.

16 CHAIRMAN LOCKYER: Thank you, Mr. Johnson. Good luck to  
17 you.

18 MR. JOHNSON: Thank you.

19 CHAIRMAN LOCKYER: We also have Mr. Jordan, member of the  
20 Transportation Commission.

21 This isn't Mr. Jordan.

22 SENATOR KOPP: Mr. Chairman, Members, if I may just take  
23 a moment to present Mr. Jordan to the Committee. I do so because  
24 of my respect for him. I do so also because I've known him the  
25 better part of the eleven months or so that he's served on the  
26 Commission.

27 And I come here to commend him for confirmation  
28 strongly. He has a considerable background in transportation,



1 more particularly in rail transportation. Let me tell you, he has  
2 made me very happy that he is a member of the Commission. He has  
3 been designated to the High Speed Rail Commission, where he's  
4 particularly well suited by qualification, and that qualification  
5 includes his tremendous experience in administering and managing  
6 rail transit.

7 And I'm sure that you've reviewed his biography and know  
8 the specific details of his career. But just let me tell you, as  
9 someone who on at least two or three occasions has been allowed to  
10 join the Committee to cross examine nominees, I want you to know  
11 that this is an appearance in a different way, as I say, to  
12 commend him to you for confirmation.

13 If I might be excused, I'll return to Revenue and  
14 Taxation.

15 CHAIRMAN LOCKYER: Have a good time. Thank you, Senator  
16 Kopp.

17 SENATOR KOPP: You're welcome.

18 CHAIRMAN LOCKYER: Did you want to start with any opening  
19 comments, sir?

20 MR. JORDAN: Mr. Chairman, I think anything I would say  
21 now would probably be after the close was made, and I ought to  
22 keep my mouth shut.

23 I would like to beg your indulgence and that of the  
24 Members of the Committee to introduce my wife who's sitting about  
25 four rows back in a black suit. She might divert your attention  
26 from me, and you can pay more attention to her.

27 Otherwise, I welcome your questions, if I may.

28 CHAIRMAN LOCKYER: Are there questions from Members.

1           What observations do you have about CTC, Caltrans, and  
2 these various structures and programs that you've had a chance to  
3 experience first hand in the last year?

4           MR. JORDAN: There are at least a dozen questions, I  
5 think, that I can infer from that larger question.

6           CHAIRMAN LOCKYER: I'm just trying to get you started.

7           MR. JORDAN: Mr. Chairman, I would make the following  
8 observations.

9           The CTC can play a vital role as it was constructed  
10 legislatively as an independent organization, body, panel.

11           I think that the pain and agony that the state has been  
12 facing in funding, the problems of the transportation  
13 infrastructure, force us to concentrate too often at the margin,  
14 so that we don't have an opportunity to address some of the larger  
15 policy issues and provide, hopefully, the advice and consent to  
16 the administration and the Legislature that was implied by the  
17 legislation.

18           Secondly, given the nature of funding decisions, the vast  
19 majority of our time meets the 80-20 rule; we spend eighty percent  
20 of our time on twenty percent of the value, and twenty percent of  
21 our time on the eighty percent as a result. Hopefully, some day  
22 that might be capable of being reorganized. Senator Kopp, who was  
23 here a few moments ago, has in fact, as you know, proposed a bill  
24 that would modify the CTC's deliberations.

25           Secondly, I share the concern of both the Legislature and  
26 the Governor as to the size and function of Caltrans. Simply  
27 downsizing, however, in my experience -- and I did have rather  
28 substantial experience in running an over loaded organization --

1 is not really the first issue. What you have to do is decide very  
2 clearly what you want people to do, what their goals are, make it  
3 clear to them, organize to do that, and then decide how to  
4 downsize.

5 I think you saw that more recently, and this is an  
6 example, in the AT&T decision. They reorganized the company,  
7 decided how to run it, break it into three parts, then decided how  
8 many people should leave. Painful though it was, it probably  
9 represents a better opportunity for those that stay.

10 But doing so at Caltrans, I would suggest, based on some  
11 of the evidence last year in which I have been serving, there is  
12 an entirely different function if you, quote, "contract out", end  
13 of quotes. Program management is not same as building highways.  
14 And the Department would have to be, I think, educated and  
15 trained, and hopefully we would use the valuable people and the  
16 experience they have to do precisely that in doing so.

17 Beyond that, you know, my conclusions are simply those of  
18 somebody who's an observer rather than somebody in charge. As a  
19 result, I really haven't put my hands on the machine in the same  
20 way.

21 I hope that fully answers, but if not, please.

22 CHAIRMAN LOCKYER: Good.

23 MR. JORDAN: As you can imagine, I have been far more  
24 interested in some of the problems of rail infrastructure. It's  
25 much easier to address questions that you know a little bit  
26 about. The advantage I've had in that has been the so-called shop  
27 program, the major maintenance.

28 Highways have the same problems that railroad



1 infrastructure has. Once they start to deteriorate, and you defer  
2 maintenance, they get worse not better. The Department and I have  
3 had an ongoing dialogue. They have been supportive of further  
4 analysis, and in fact, the Commission agreed in terms of the STIP  
5 for '96 to increase the funding so that we can get in front of  
6 that problem more effectively and preserve the investment we  
7 have.

8 Those kinds of things I find very worthwhile.

9 CHAIRMAN LOCKYER: Does it feel like, the Commission,  
10 like a sufficiently independent and deliberative body?

11 MR. JORDAN: I don't think there's any question about its  
12 independence, truly. It's a collection of good people who are  
13 interested in doing good things. Often the debate reaches a  
14 higher level of decibels than one might want because people get  
15 passionate about what they believe, and I think that suggests  
16 independence, frankly.

17 CHAIRMAN LOCKYER: How much geographic response to  
18 funding and other decisions have you encountered? Is there a  
19 problem with members feeling like, well, I'm from some particular  
20 part of the state, so I have to fight for whatever limited dollars  
21 might go that direction? Or, are you satisfied with there being a  
22 more statewide perspective?

23 MR. JORDAN: I think the latter rather than the former.

24 Quite clearly, I live in Monterey County. The  
25 supervisors and TAMS, the transportation agency, love to engage  
26 my interest in various matters. I suspect that all the  
27 Commissioners face that kind of desire.

28 CHAIRMAN LOCKYER: I think that's correct.

1 MR. JORDAN: But that's different. In my view, I think  
2 that's a perfectly natural communication channel. That doesn't  
3 change what you do.

4 SENATOR AYALA: We discussed the little problem I have in  
5 my district, which is State Highway 71, that tapers off 10 and  
6 diagonally goes across 60 in Pomona, and eventually enters 91 from  
7 Riverside County to the beach areas.

8 There's a project going on, an extremely important  
9 project, because there's been a lot of accidents there, where  
10 the Caltrans will be taking care of about 98 percent of the  
11 problem, some 15 miles in length, but the last three miles happen  
12 to be in another county, and they refuse to put in STIP.

13 How can Caltrans spend all that money and only complete  
14 98 percent of a major project and allow some county to avoid  
15 completion the way it should be into that area that goes into 91.

16 Is there anything that you as a Commission can do to -- I  
17 think it's unacceptable to have the whole project, it's underway  
18 now, but the last three miles will be a bottleneck, because it's  
19 going to narrow in, going to be a traffic jam all the way to  
20 Pomona going south, and all the way to the beach trying to get  
21 into the thing because it'll be a bottleneck.

22 Is there anything that Caltrans can do to avoid that?

23 MR. JORDAN: Clearly, the process provides for counties  
24 to have their own set of priorities. The overriding issue of  
25 state value comes from Caltrans.

26 I would hope in our hearings, and as you know, the  
27 Southern California hearing will be taking place next Tuesday,  
28 that we can address this kind of a question and make certain that

1 Riverside County understands the problem and are prepared to  
2 address it through the medium of utilizing Caltrans, information,  
3 and technology.

4 But clearly, in the absence of Riverside making it a  
5 priority item or Caltrans, the Commission is stuck with the  
6 priority list. That's not something I can individually -- other  
7 than in a make certain --

8 SENATOR AYALA: Is there anything you can do about that  
9 county?

10 MR. JORDAN: I think that the dialogue, the colloquy, is  
11 the most important thing.

12 SENATOR AYALA: That hasn't worked so far, dialogue.

13 MR. JORDAN: Maybe we haven't addressed it quite as well  
14 as we should yet.

15 SENATOR AYALA: Maybe you folks can do a better job  
16 because we haven't done very well.

17 MR. JORDAN: I'm glad you said you folks, not just me  
18 personally, but I'll take it on personally.

19 SENATOR AYALA: Well, you as a part of the Commission.

20 MR. JORDAN: I understand.

21 SENATOR AYALA: It doesn't make sense, really, to --

22 MR. JORDAN: As you look at it, I understand your  
23 question.

24 SENATOR AYALA: Get involved with millions of dollars,  
25 only to have a bottleneck.

26 Caltrans is willing to spend 20 million to widen it a  
27 little bit and put some shoulders for safety features. That's  
28 totally unacceptable for a project of that nature.



1 MR. JORDAN: There are two or three major projects which  
2 I have been able to have on an individual basis with Caltrans;  
3 discussions on an individual basis.

4 I think this is one we should look at more carefully,  
5 because it reminds me very much of that wonderful cartoon about  
6 railroad building. When they built it, it looked like this when  
7 they got finished. Do you remember, they didn't come together.

8 You don't want to do it that way, I understand.

9 SENATOR AYALA: I'd like to talk to you further about  
10 this thing because we're not going to resolve it now, but I think  
11 it's of major concern to the people in that general area. I think  
12 it's extremely important that we complete the job right, not at 98  
13 percent of capacity. That's wrong to do it that way.

14 CHAIRMAN LOCKYER: You're about to get lobbied by each of  
15 us for our favorite local projects.

16 MR. JORDAN: My pencil is broken.

17 CHAIRMAN LOCKYER: I guess the question I didn't quite  
18 follow your answer is, to what extent is there some flexibility to  
19 rearrange all of the submissions that come from the various  
20 counties or regional agencies to reflect a more complete or  
21 balanced final product? Do you have that flexibility?

22 MR. JORDAN: We have the opportunity to move projects up  
23 on the STIP, but I think the legislation as the Legislature has  
24 put it forward depends heavily on the sense of priorities and the  
25 commitment of the local areas. And it would be I think --

26 CHAIRMAN LOCKYER: So, if it isn't even on the STIP, then  
27 you're --

28 MR. JORDAN: It's very difficult to put it on,

1 absolutely. But we do have an issue here that begs the question,  
2 and we've seen it in a couple of others, at least I have. I think  
3 it's a legitimate question we should raise and be sure we  
4 understand fully the nature of why Riverside doesn't want to do  
5 something. That's appropriate, I think. I hope you'd agree.

6 CHAIRMAN LOCKYER: Yes, you'll be hearing it from me this  
7 week about 880, the Nimitz freeway in the East Bay, which Senator  
8 Petris and I are associated with. Well, down further is the  
9 problem.

10 MR. JORDAN: Would it help for you to know that I was  
11 born in Oakland?

12 CHAIRMAN LOCKYER: It can't hurt.

13 SENATOR PETRIS: I'd like to know why he left.

14 CHAIRMAN LOCKYER: Any other questions from Members?  
15 Senator Petris.

16 SENATOR PETRIS: The Hoover Commission has been examining  
17 our transportation system over-all for sometime in California.  
18 Back in 1992, they issued one of their reports, and they say that  
19 we have a state concensus to develop a system that includes a  
20 variety of transportation modes in the state to have a unified  
21 combined thing.

22 But it's been hindered by highway bias and Caltrans, and  
23 a lack of advocacy in the Governor's cabinet. That's what the  
24 Hoover Commission says. We have heard that before.

25 Can you comment on that as a member of the Transportation  
26 Commission? Is that a bias that you've seen? Do you agree that  
27 that's the case? Whether you do or not, others do.

28 What can we do about changing that?

1 MR. JORDAN: Well, your last question, if I may, Senator,  
2 suggests that I agree with the presumption that the bias exists.  
3 Since we haven't established that yet, give me a movement to  
4 address it, if I may.

5 I haven't seen a bias administratively. I think there's  
6 a significant amount of attention on the state rail plans.

7 I think if there is a problem, it lies more in the nature  
8 of how it's been organized on a statewide basis, and the  
9 commitment of the citizens of this state who failed to pass two  
10 bonds issues so that there's a shortage of funds.

11 SENATOR PETRIS: We don't have a long-range state plan?

12 MR. JORDAN: No, we do not. There was a ten year plan  
13 put in place a few years ago, but it presumed the bond issues.  
14 Didn't happen. Now we've got to have a new one.

15 I know that there's been good dialogue because I have  
16 participated in it, given my background. Mark Watts, who just  
17 went to the Legislature on the Assembly side, and I have had many  
18 discussions about precisely that, and I know he was very  
19 instrumental in trying to move something.

20 But you are dealing with a bias that is long seated in a  
21 culture that's quite different. I mean, one of the things that we  
22 have found on this High Speed Rail Commission, where I've worked  
23 for last two years for the state, is the presumption that somehow  
24 European and Japanese railroads, passenger railroads, make money  
25 because that's the thing they normally do.

26 But there's a culture difference in both of those  
27 countries and continents compared to the United States. We put  
28 our investment in highways, starting in the '50s. We didn't put



1 it into railroads. Railroads were for profit, running freight  
2 trains and ran passenger on the side.

3 In the early '40s, middle '40s, that's fine. But the  
4 introduction of the jet made a big difference.

5 SENATOR PETRIS: Railroads have had a very handsome  
6 subsidy from the federal government since day one.

7 MR. JORDAN: That I disagree with, you'll forgive me.  
8 As an old railroad man, I don't think that's correct.

9 They got the land, the western roads, but that was the  
10 end of it.

11 SENATOR PETRIS: How about the mail subsidies.

12 MR. JORDAN: That was very modest, and there's some  
13 question as to whether or not that was really a subsidy, or we  
14 were embracing more costs than we were revenue.

15 SENATOR PETRIS: Well, I'll have to examine the  
16 literature, because the only things I've read -- not because I  
17 selected them but they came to me -- go in the opposite direction.

18 MR. JORDAN: Let me commend to you the preliminary and  
19 final system plans that I organized and wrote, with three hundred  
20 other people, that reorganized the eight bankrupt railroads in the  
21 northeast.

22 The issue of cross subsidation of the railroad industry  
23 was a profound issue, and at that point, the Congress of the  
24 United States concluded that it was wrong, and thereafter,  
25 passenger ought to stand on its own, and freight ought to stand  
26 on its own.

27 There was tax benefits to the railroads through the '70s,  
28 but once deregulation occurred, the end product of which was the

1 elimination of the Interstate Commerce Commission in most recent  
2 legislation, you'll notice that railroads, private, freight, for  
3 profit railroads, have substantially improved their profitability  
4 and simultaneously have, in real terms, reduced the rates that  
5 shippers were paying. It's a remarkable story.

6 And the productivity of the industry is well ahead of  
7 the rest of American industry.

8 You're on one of my hot buttons, as you can see. This is  
9 something I get very worked up on.

10 I don't disagree with the first part of your question  
11 though. It's very hard not to have a bias.

12 The automobile is a comfortable, convenient way to get  
13 most places, so it's easy. And we built a highway system to make  
14 it work. And our cities are so far apart that passenger service  
15 is typically not as effective as airplanes.

16 And we deregulated air fares at the end of the 1970s, and  
17 today we're the beneficiary of that. We can fly from here to  
18 Southern California for, what, \$39 now; from San Jose to Portland  
19 for \$50. Those are very modest fares.

20 If you bought a ticket a few years ago from London to  
21 Paris, it was four or five times as much, and they had a regulated  
22 market.

23 SENATOR PETRIS: Yes, but look at the destination.

24 MR. JORDAN: It's very difficult in the circumstances of  
25 reduced means, with a population whose culture is oriented to the  
26 car, to create a demand for passenger service.

27 I think that one of the issues that the High Speed Rail  
28 Commission, and therefore, the CTC eventually, have to address is

1 how to create that galvanizing action that makes people want to  
2 build a multimodal system so that they have options and we can  
3 make it work.

4 SENATOR PETRIS: We don't have the answer to that yet.

5 MR. JORDAN: I think we're a long ways away, but I think  
6 it's possible. And I believe the High Speed Rail -- and I'm off  
7 CTC now, so you'll forgive me -- but as I have explained to a  
8 couple of your colleagues in the last 24 hours, the ridership  
9 figures that we have preliminarily looked at suggests that there  
10 is a significant market, and one which would pay for itself on an  
11 operating basis, to build a high speed system this state.

12 What it doesn't suggest is that the infrastructure costs,  
13 which are in the multi-billion dollar range, would be paid for by  
14 the private sector. That's the question we've got to figure out  
15 more answers to.

16 But clearly, times are changing. And we've got to, I  
17 think, look at other ways of solving problems than what we've done  
18 in the past. Congestion, et cetera, cost of a new airport.  
19 Denver cost \$6-7 billion to build a new airport.

20 We're running out of space in Los Angeles and San  
21 Francisco. What are the options.

22 These are all significant questions that this  
23 Legislature, I'm sure, will face.

24 SENATOR PETRIS: I think you're right. I was reading  
25 this morning about the pollution caused by the Sacramento  
26 Airport. I don't suppose they're the only ones.

27 MR. JORDAN: I would think the characteristics are the  
28 same.



1           SENATOR PETRIS: Significant problem. I guess whichever  
2 way we go, we run into problems.

3           MR. JORDAN: And the benefits to get them cost a lot. I  
4 think the Alameda Corridor project from Southern California, it's  
5 a freight project, not a people, although peripherally people will  
6 benefit enormously by clearing that bad transportation situation  
7 up -- will do enormous benefit for the economy of the state,  
8 enormous benefit for the freight railroads, enormous benefit for  
9 the trucks, and make it much easier to get around, and therefore  
10 reduce congestion, pollution.

11           But it's got a price tag on it. It's nearly two billion;  
12 we're short several hundred million. It's not easy to accomplish  
13 these things.

14           CHAIRMAN LOCKYER: You can almost say that about  
15 virtually every program.

16           MR. JORDAN: I'm certain.

17           CHAIRMAN LOCKYER: But that's a main one that's a very  
18 essential one for economic vitality of the region.

19           Other questions from Members? Are you ready to move  
20 along?

21           SENATOR LEWIS: Move confirmation.

22           CHAIRMAN LOCKYER: We have motion to confirm. Call the  
23 roll.

24           SECRETARY WEBB: Senator Ayala.

25           SENATOR AYALA: Aye.

26           SECRETARY WEBB: Ayala Aye. Senator Lewis.

27           SENATOR LEWIS: Aye.

28           SECRETARY WEBB: Lewis Aye. Senator Petris.

1 SENATOR PETRIS: Aye.

2 SECRETARY WEBB: Petris Aye. Senator Beverly.

3 SENATOR BEVERLY: Aye.

4 SECRETARY WEBB: Beverly Aye. Senator Lockyer?

5 CHAIRMAN LOCKYER: Aye.

6 SECRETARY WEBB: Lockyer Aye. Five to zero.

7 MR. JORDAN: Thank you very much.

8 CHAIRMAN LOCKYER: We have been very impressed,  
9 entertained and educated by your presentation.

10 MR. JORDAN: I didn't come to entertain, but thank you.

11 CHAIRMAN LOCKYER: I wish we'd have more opportunities  
12 like that. Good luck.

13 MR. JORDAN: Thank you.

14 CHAIRMAN LOCKYER: Let's see, Senator Peace, were you  
15 here for any particular--

16 SENATOR PEACE: Mr. Roberts.

17 CHAIRMAN LOCKYER: Okay, we'll take him next, then, Ron  
18 Roberts, for State Air Resources Board.

19 SENATOR PEACE: Thank you, Mr. Chairman, Members.

20 I have the pleasure to add my suggestions along with the  
21 many others that I know are before you to approve of Ron Roberts's  
22 nomination for service on the Air Resources Board.

23 I've had the opportunity to be both with and against Ron  
24 on occasion in San Diego through various iterations of issues and  
25 political campaigns and whatnot. At the risk of doing him harm by  
26 describing him in what is, I suppose, not a politically correct  
27 manner these days, he has carved out a well deserved reputation in  
28 San Diego as a San Diegan first and a politician second, for all

1 of the generally pejorative notions that we all endure as a  
2 consequence of being politicians.

3 Like myself, Ron was raised in San Diego, and his family  
4 is here in San Diego. He's one of those lost souls that found  
5 himself in the Republican Party through some sort of strange  
6 happenstance that many times is inconsistent with his good sense.

7 CHAIRMAN LOCKYER: We'll keep hoping.

8 SENATOR PEACE: He represents -- Ron and I also represent  
9 a common constituency. Our districts overlap in great measure. I  
10 think in all of his work in his prior incarnation as a City  
11 Councilman, as well as recent addition to the San Diego Board of  
12 Supervisors, he has demonstrated a tendency, a characteristic,  
13 predisposition to bring people together to resolve issues.

14 He's never been associated in any way with any debate in  
15 the San Diego region as anything other than a healer, or someone  
16 that was honestly attempting to hear from all sides.

17 He's very often found himself in the middle of highly  
18 controversial circumstances. But I, quite honestly, could not  
19 identify a single occasion in which he has even been accused, as  
20 far as I can recall, but certainly not with any sort of objective  
21 or rational justification, of having been an antagonist or  
22 protagonist for a particular group or cause.

23 Even in circumstances in which, for example, a few years  
24 back, Ron and I had some very different viewpoints about where we  
25 ought to head on an issue that's real important to San Diego in  
26 terms of its airport -- you were just discussing airports -- its  
27 airport location. It was a public debate that I think was unusual  
28 in its civility, and I think ultimately productivity in terms of



1 advancing the real underlying issues that are always underneath  
2 all the rhetoric. And I hope that San Diego, in part because of  
3 some of the discussions that occurred in that area, is in a  
4 position in the next couple of years to make some real decisions  
5 that will be important to us. And Ron in particular contributed  
6 immensely to that debate.

7 So, from San Diego's perspective, as you know, we're kind  
8 of a parochial place, and the first -- Ron, more than anything,  
9 meets our first criteria; he was born and raised in town, so we  
10 don't have to deal with any of these imports.

11 CHAIRMAN LOCKYER: He went to school in Berkeley.

12 SENATOR PEACE: He's a San Diegan, and that's important  
13 to us.

14 We fought very hard to get this position on the Air  
15 Resources Board. As you know, there's some political, historical  
16 controversy associated with guaranteeing a position for San  
17 Diego. So, we always look very carefully in terms of not wanting  
18 to waste that political ammunition because we realize we spend a  
19 bullet in order to secure the position. So, we look very  
20 carefully each time someone is selected.

21 Members of the City Councils throughout San Diego, fellow  
22 members of the Board of Supervisors, the State Legislators here in  
23 the Capitol, I think all of us elected officials unanimously  
24 support his nomination.

25 CHAIRMAN LOCKYER: Thank you, Senator.

26 SENATOR PEACE: Thank you.

27 CHAIRMAN LOCKYER: We appreciate your comments.

28 Well, Mr. Roberts, do you want to begin, Supervisor, with

1 any particular comments?

2 MR. ROBERTS: I have a relatively short statement, if I  
3 could give that to you.

4 I have to say that I was a little concerned when Steve  
5 started to refer to a heel. I'm glad he said healer.

6 I think that's a more unique introduction than I've had  
7 at any time.

8 Mr. Chairman and distinguished Members of the Rules  
9 committee, for almost one year I've had the privilege of  
10 representing San Diego County on the Air Resources Board. Now I'm  
11 before you in what feels like a job interview.

12 Well, I want you to know that I like this job, that I've  
13 worked hard, and that I've learned a lot about air quality issues.  
14 In fact, over the past ten months, I've spent a considerable  
15 portion of almost forty days on ARB related activities.

16 In addition to regular meetings and public work shops, I  
17 visited refineries, ARB facilities, small businesses, and large  
18 manufacturers. I've driven electric cars and those powered by  
19 natural gas.

20 While I've come to understand many of the concepts and  
21 standards, occasionally I'm baffled by a new abbreviation.  
22 Recently, my feelings of confidence were shaken when I realized  
23 that I didn't know the meaning of a simple familiar term, NMOG.  
24 It still happens, but I am learning this obscure language.

25 Beyond the learning, I've tried to contribute to the  
26 Board's efforts towards cleaning our air. Like most people from  
27 San Diego, I'm very proud of our county. On a clear day, the  
28 mountains to the east and the Coronado Islands to the southwest

1 provide a stunningly beautiful view, and my goal is to increase  
2 the number of days we enjoy this view by reducing the number of  
3 poor air quality days.

4 Since we're heavily impacted by transported air from the  
5 Los Angeles area, this is not just a San Diego problem. We need  
6 statewide solutions.

7 As an architect, as you noted, Mr. Chairman, educated at  
8 the University of California at Berkeley, I've worked to improve  
9 the quality of our built and our natural environments. As a  
10 member of MTDB, our local public transportation board, and APCD,  
11 our County air district board, I've been directly involved in air  
12 quality issues.

13 Last year, I was very successful in pushing for the  
14 acquisition of 30 new CNG buses. As a City Councilman and now as  
15 Chairman of the Board of Supervisors, representing the most  
16 urbanized area of our county, I've also become acutely aware of  
17 the negative impacts on the health of our residents, especially  
18 our seniors and our children, that result from poor air quality.

19 By understanding the problems and the options, we can  
20 make a difference.

21 I want to help to clean up the air in San Diego and in  
22 California. And I would very much appreciate your support.

23 CHAIRMAN LOCKYER: Questions from Members? Senator  
24 Ayala.

25 SENATOR AYALA: Yes, I have a question.

26 Mr. Roberts, I believe in 1990, the ARB adopted the low  
27 emission vehicle program for the state of California. That was a  
28 major project you undertook.



1           What has happened since in terms of the ARB? What have  
2 they been involved with since that was adopted to clean up the air  
3 in terms of the motor vehicles?

4           MR. ROBERTS: Let me, if I can, there's quite a history  
5 from 1990 until now, much of it I am learning about, having served  
6 now for just over ten months on the Board.

7           What I'm amazed at, I think that each of us has probably  
8 followed the discussion that's going on on the EVs, or ZEVs, the  
9 zero emission vehicles, the electric cars, if you will.

10          But there are a number of other major things that are  
11 going on. This year we will have reformulated gasoline that will  
12 be the most significant change of all of the programs. It will  
13 remove over a billion pounds of pollutants from the air in  
14 California on an annual basis. That is far more significant than  
15 any of the other programs that are being discussed and debated.

16          Also overshadowed, there was a recent announcement by  
17 Ford Motor that they have received certification on the Ford  
18 Escort as an LEV, and with the significant sales of that vehicle  
19 in the State of California, that represents an enormous  
20 improvement in air quality.

21          So, there are a number of programs that are coming  
22 forward that we have had some introduction to this past year.

23          SENATOR AYALA: You've embarked on a number of programs  
24 since that first --

25          MR. ROBERTS: Since the steps that you mentioned in  
26 1990. And these are the things that we've been working on this  
27 past year.

28          SENATOR AYALA: Do you believe that pesticides are a

1 significant pollution problem in California?

2 MR. ROBERTS: We -- I think there's probably some overlap  
3 in looking at pesticides. I know that our Chairman, John Dunlap,  
4 has expressed some interest, and I think is, in fact, currently  
5 working with one of the other state boards to look into that  
6 issue.

7 There are some concerns. I think there are some  
8 legitimate concerns, but I think we've got some work to do before  
9 we can make any final decisions.

10 SENATOR AYALA: Do you think the Board will be  
11 promulgating new regulations to deal with the pesticides  
12 statewide?

13 MR. ROBERTS: I think that we're going to have to see the  
14 results of some of the studies that are under way.

15 SENATOR AYALA: There are studies going on at the moment?

16 MR. ROBERTS: There are some current studies, I believe,  
17 regarding some of the pesticides; that's correct.

18 SENATOR AYALA: Thank you.

19 CHAIRMAN LOCKYER: Senator Petris.

20 SENATOR PETRIS: Yes, I have several areas. I'll try to  
21 be brief in each one.

22 One is the status of the Board. Some contend the Board  
23 is an independent agency, and it should act on its own after  
24 reviewing whatever the problem is before it.

25 Others say that the Board doesn't have any independence  
26 because they serve at pleasure of the Governor. The moment the  
27 Governor disagrees with a vote, he can toss you out.

28 Which is accurate from your experience in the last ten

1 months?

2 MR. ROBERTS: My experience -- first of all, there's  
3 never been any kind of a threat or a communication of being thrown  
4 out.

5 I've put a lot of time into some of these issues,  
6 especially the controversial issues. I feel very comfortable that  
7 I'm going to be able to vote as I see the issue. And there are  
8 public -- there is public correspondence from the Governor on some  
9 of these. That's the only communication I've had on those issues  
10 with that office.

11 SENATOR PETRIS: How about when you were first  
12 appointed? How did they first contact you?

13 MR. ROBERTS: Senator, I may be somewhat unique in that  
14 the Governor, as Mayor and as Senator, being from San Diego, we  
15 have, perhaps, a longer history.

16 And also in San Diego, the situation is that the Board of  
17 Supervisors is the air quality board for the County, and it's a  
18 member of that board that would be qualified for this  
19 appointment.

20 There was never any interview. There was never any  
21 questions.

22 I've known the Governor for some time, and I was asked if  
23 I would be interested in this, and I -- after looking into it, I  
24 agreed that I would be very interested.

25 SENATOR PETRIS: Have there been any situations where  
26 you've disagreed with the Governor in your votes on the Board?

27 MR. ROBERTS: There is -- it is infrequent to even know  
28 what the Governor's position is on an issue that's before the



1 Board.

2 I think most significant one certainly is the ZEVs, the  
3 zero emission vehicles, the electric cars, where they've been --  
4 through correspondence and public correspondence, have been quite  
5 clear of what their interests are.

6 We haven't voted on that issue yet. I've had some  
7 concerns about that.

8 SENATOR PETRIS: You voted once. The question is, are  
9 you going to throw it out; isn't it.

10 MR. ROBERTS: We haven't -- Senator, we have not yet  
11 taken any votes on that issue. We've had some workshops. We've  
12 had two special meetings right before Christmas, and I think there  
13 is a concensus evolving that we need to make some modifications.

14 And I will tell you, I personally -- I've driven one of  
15 the General Motors electric cars for two weeks, and I have some  
16 very strong concerns about the range of that car. I like the car;  
17 I want electric cars. We want to have a successful program.

18 SENATOR PETRIS: You need an awful long cord, I know  
19 that.

20 MR. ROBERTS: I live very close to my office, within two  
21 miles of my office, and I found that the suggestion that you could  
22 get 70 miles around the city and 90 miles on the freeway was very  
23 unrealistic.

24 I was able to get just over 40 miles around the city, and  
25 if I stayed only on the freeway could I get 70 miles.

26 That gives me great deal of concern. And you're right,  
27 You would need a long cord.

28 But I think that what we really want to do is see that we

1 ultimately have a successful program. I think the potential, with  
2 the new batteries that are out there for -- to have something that  
3 will lead to cleaner air in this state, I think there is a high  
4 degree of likelihood that we can succeed if we go about this in  
5 the right way.

6 SENATOR PETRIS: Is there only one electric vehicle  
7 available, I mean one company?

8 MR. ROBERTS: No. Ford is producing. They have a  
9 prototype. It's in one of their small trucks. And Chrysler has  
10 -- is experimenting with a van which I would suspect have very  
11 limited range because of the size.

12 I was at auto show in Los Angeles a week or so ago, and  
13 saw that Toyota has a -- it's almost like -- it looks like a  
14 four-wheel drive, maybe a Jeep type configuration.

15 You're seeing a lot of experimentation going on right  
16 now. In fact, there was one, I think it was Nissan, that has a  
17 vehicle with lithium ion batteries in it that's being tested that  
18 could produce a significant breakthrough.

19 SENATOR PETRIS: I'm puzzled by this. I've brought it up  
20 before in prior meetings.

21 When I grew up in west Oakland, there was a group, there  
22 was a company called the Railway Express Agency. I guess they're  
23 still in existence. They had whole fleet of electric trucks, and  
24 they went all day long, delivering parcels all over the place.

25 I remember the first time I saw one, I heard this whining  
26 noise coming down the street. I turned and looked. It was a  
27 truck. And it was later explained to me that that runs on  
28 electricity.

1           Now, that was at least 60 years ago. Are you telling me  
2 we've gone down hill instead of up hill in trying to develop  
3 electric vehicles, in view of the fact that those were  
4 successfully operating for a number of years way back then?

5           MR. ROBERTS: No, I didn't mean to suggest that.

6           What I would suggest to you, we probably haven't  
7 accomplished a whole lot in those intervening 60 years.

8           SENATOR PETRIS: Who is we?

9           MR. ROBERTS: I'm talking about the automotive industry.  
10 I'm talking about the people in this state.

11           Over the last few years, you've seen a major effort  
12 launched, I think largely because of the work of the Air Resources  
13 Board this this state. And I think that that's going to pay off  
14 in major dividends.

15           But the lead acid battery that I suspect was probably in  
16 those trucks and that powers the General Motors EV-1 that they've  
17 chosen to call their car, they're very limited in what they can  
18 do. They're very heavy, and the range is extremely limited. And  
19 the life cycle, the life span of the batteries is very limited.

20           Probably for a trucking operation, or maybe a delivery  
21 service, maybe, that had a limited number of miles that it had to  
22 achieve each day, it could be a good choice and probably would  
23 have made sense.

24           SENATOR PETRIS: Let's see, in 1966, I had occasion to go  
25 to England to speak on British TV about air pollution in  
26 California and the electric alternative.

27           Well, they had huge cranes operating on electric trucks.  
28 I saw milk delivery being made door-to-door with the bottles,



1 electric trucks.

2 I inquired about it, and I was given a kind of a poster  
3 that had silhouettes of every type of electric vehicle that was in  
4 use in England in the mid '60s. It included large trucks. It  
5 included trucks with a huge crane on them. It included the small  
6 delivery truck and the passenger vehicle.

7 Yet, when I came back and talked about it, they just  
8 shook their heads and said, "No, it can't be done."

9 Well, it was done. They were doing it at that time. And  
10 they were motivated by the horrible smog problem in London that  
11 industry created, not the automobile, mostly industry. They  
12 thought that to the extent that the automobile contributed, they  
13 would cut down on that part of it.

14 Then I remember my childhood and I say there's something  
15 wrong here. It doesn't match up. It seems that we've done it at  
16 certain times, and other people have done it, and now a lot of  
17 people are saying can't be done.

18 I understand your Board set a goal for the end of the  
19 century to switch to nonpolluting vehicles, and that was rescinded  
20 because of the tremendous opposition.

21 Can you comment on what caused the change in policy of  
22 the Board?

23 MR. ROBERTS: Well, first of all, it hasn't been  
24 rescinded.

25 What the Board is considering is how can we keep on  
26 track, given the concerns that I've expressed to you with respect  
27 to those things that I've seen.

28 The milk delivery that you mentioned would be the perfect

1 kind of vehicle for electric batteries, because when you think  
2 about it, it's a relatively short distance, the milk route,  
3 generally speaking, for a delivery.

4 We've talked about other uses. But the fact is, the  
5 range is very limited. By the turn of the century, we think we'll  
6 have batteries that could conceivably double those numbers and  
7 make this, I think, competitive in every way with the internal  
8 combustion engine.

9 What we want to make sure is that we bring this on line  
10 in a way that doesn't give people a sour experience with early  
11 vehicles so as to damage the more successful introduction of a far  
12 more capable battery and platform in the later years.

13 SENATOR PETRIS: Is this being done in other countries?

14 MR. ROBERTS: To my knowledge, the experiments that are  
15 in the work that particularly General Motors has done here in the  
16 United States is really state of the art.

17 Sony is spending a lot money on a lithium ion battery  
18 that looks like -- has a great deal of promise. It's being tested  
19 in Japan. I think the Japanese have a lot of interest, especially  
20 when they look at the way the winds generally blow, and look at  
21 the possibility of having the Chinese driving a lot of cars. I  
22 think they would like to see them in electric cars because of  
23 their own concerns.

24 But the fact is, there's going to be a lot money to be  
25 made if somebody is successful in producing a car --

26 SENATOR PETRIS: It seems to me I heard several years ago  
27 that Japan had developed it. They had them in vans, and they had  
28 them in small light delivery vehicles, but I haven't seen much

1 about it since. I don't know whether these are hopes or  
2 realities. It seemed like reality. They had a picture of it, and  
3 everything. It was like Econoline Ford vehicle.

4 MR. ROBERTS: I wouldn't be surprised that that's  
5 happening. But again, with the more advanced batteries, I think  
6 that the testing programs probably haven't gotten that far.

7 SENATOR PETRIS: How much time more do you think we'll  
8 need before we are successful on the electric side?

9 MR. ROBERTS: Part of what we're discussing would require  
10 that within two years, we start to see the advanced batteries into  
11 use on the streets in California.

12 And whether we would have those in full production by the  
13 year 2000 or not is not clear yet, but somewhere between  
14 2000-2001, that time period, we'd expect to see other types of  
15 batteries with a much longer range.

16 SENATOR PETRIS: Is General Motors doing this alone, or  
17 have they formed some kind of consortium with other companies to  
18 work together on that?

19 MR. ROBERTS: Each of the companies is working  
20 separately. I think there is an advanced battery consortium in  
21 which the major companies are participating.

22 Part of what we're discussing with them would be that  
23 they would contribute \$35 million to continue to support that on a  
24 very high level, the research that's being done by that group.

25 SENATOR PETRIS: I think they got a waiver from the  
26 federal government on antitrust legislation in order --

27 MR. ROBERTS: Yes. As far as this consortium, that's  
28 correct. I don't know if it's a waiver, but they're certainly



1 able to work as a group. And basically what they're doing is,  
2 they're funding other companies also on research for this, for the  
3 development of a far more capable battery.

4 SENATOR PETRIS: I think it's time for me reintroduce  
5 some of my legislation. I had one that offered 25 million bucks  
6 to the first person or company that came up with a feasible  
7 electric car. No takers so far, so the money's gone.

8 MR. ROBERTS: Well, I think the reward's going to be  
9 even greater than that when they're successful.

10 SENATOR PETRIS: This was a long time ago. It'll be 200  
11 million this time.

12 When's last day for introducing bills?

13 Thank you.

14 CHAIRMAN LOCKYER: Other questions from Members? Senator  
15 Lewis.

16 SENATOR LEWIS: What was the name of the vehicle you were  
17 driving, the electric vehicle?

18 MR. ROBERTS: The electric vehicle was what was called  
19 the Impact, and now General Motors has renamed it, and I think for  
20 good reasons, their EV-1. It's the first vehicle, I guess also,  
21 passenger vehicle, to carry the General Motors label and will be  
22 marketed through their Saturn dealerships in Los Angeles and in  
23 San Diego later this year.

24 SENATOR LEWIS: What is your understanding of what price  
25 consumers will pay for that?

26 MR. ROBERTS: What I'm told is that they're looking at  
27 something in the \$30-35,000 range.

28 And I asked the question if this vehicle would be

1 available through lease agreements, and was told that it would be,  
2 which I thought would be a way to help to get it started,  
3 especially for people who are hesitant to buy into a new  
4 technology.

5 SENATOR LEWIS: Do you think, at a \$30-35,000 cost for a  
6 vehicle that has a forty-mile range, do you think there'll be  
7 sufficient consumer demand to meet that initial requirement?

8 MR. ROBERTS: Well, I think there'll be -- first of all,  
9 it's very definitely not a large market.

10 Secondly, I think that what you're talking about is  
11 wanting to get enough of these on the road so we can get a lot  
12 more information, and we can start to also develop a corresponding  
13 infrastructure system.

14 There's a lot of questions that need to be answered.  
15 There's no adoption of uniform standards with respect to charging  
16 units. And we'd like to see some uniform standards, for instance,  
17 where there's no reason why those can't be in shopping centers and  
18 at various places around the city so that if you need a charge,  
19 and you're away from home, you'd be able to get it. I know that  
20 there are some areas in which we're starting to see those charging  
21 stations put in by the public.

22 But we've got a lot of work to do. I think the way to  
23 get started is to get these cars on the road and become familiar  
24 with them.

25 SENATOR LEWIS: The initial target was two  
26 percent?

27 MR. ROBERTS: The initial requirement in '98 was going to  
28 be two percent.

1           SENATOR LEWIS: And the way that worked was, you could  
2 only sell X number of cars based on however many of the electric  
3 vehicle that you sold?

4           MR. ROBERTS: For the seven largest manufacturers it was  
5 to be two percent of their total sales in California, each of them  
6 individually.

7           SENATOR LEWIS: So the incentive would be to lower the  
8 cost below market value on the two percent of the vehicles so that  
9 you'd be able to sell more of the others?

10          MR. ROBERTS: I'm not sure if I'm following you, Senator.

11          SENATOR LEWIS: What happens if there's two percent of  
12 your customer base is not willing to buy this particular vehicle?  
13 Then you have to restrict the number of the other vehicles that  
14 you can sell?

15          MR. ROBERTS: No, I think what they had to do was produce  
16 them. I'm not sure that the way the regulation was drafted that  
17 they necessarily had to be sold. They had to be produced.

18          And I would imagine if they produced it, they were going  
19 to figure a way they would sell it. But that's all part of what  
20 our concerns are, is to have people producing large numbers of  
21 product that might not have a strong market.

22          SENATOR LEWIS: How does it ultimately get resolved?  
23 What good does it do us to have a fleet of unbought expensive  
24 automobiles?

25          MR. ROBERTS: We are more interested in getting these  
26 cars on the streets, as I suggested in my comments. There's a lot  
27 to be learned by us, and there's a whole lot of related issues  
28 that come into play.



1           You know, I didn't make the point, and I should have, in  
2 the year 2003, the requirement is that there be ten percent of the  
3 productions in electric cars. That has not been changed.

4           SENATOR LEWIS: To the degree that there's these  
5 arbitrary requirements, doesn't it follow that for them to be able  
6 to keep their market share for selling other automobiles in the  
7 State of California, that they would at some point in time have to  
8 heavily discount these cars? Would that necessitate driving up  
9 the cost of the other vehicles?

10          MR. ROBERTS: I think if they -- if they had to produce a  
11 relatively large number of cars with lead acid batteries, that  
12 they're going to have to figure a way to price them that would --  
13 that some of those costs are probably going to have to be shifted,  
14 yes.

15          SENATOR LEWIS: And at that price, if a consumer is going  
16 to pay \$25,000 or \$30,000, that's basically the cost of many '95  
17 or '96 models, which, because of increased technology, are lower  
18 polluting anyway. I wonder about the strategy that's being  
19 pursued.

20          SENATOR PETRIS: It means saving on gasoline; you save  
21 money on gasoline.

22          MR. ROBERTS: From everything I've seen, there is a  
23 savings, reduced operating cost, with these electric vehicles,  
24 yes.

25          SENATOR PETRIS: I took a ride in an electric car years  
26 ago up the steepest hill in Berkeley that had both electric and  
27 gasoline; you could switch back and forth. It was just electric  
28 only. And the person did that to refute the criticism that

1 there's no power and it's hard to go up a hill.

2 He took me up Marin, which is the steepest one in  
3 Berkeley, which I don't care to climb again, actually. It's just  
4 too steep for me.

5 But I was very impressed. This was a long time ago.

6 CHAIRMAN LOCKYER: Coming down is fun.

7 SENATOR PETRIS: Coming back, we took another street at  
8 my request.

9 MR. ROBERTS: The performance of these cars with respect  
10 to the power, I think, any perceptions that they don't perform  
11 ought to be dispelled when you see a few of these on the streets  
12 and if you spend any time driving them.

13 They perform with respect to their acceleration, with  
14 respect to their top end speed, all the way right down the line  
15 they perform admirably.

16 I think range is the issue.

17 SENATOR PETRIS: Yes.

18 CHAIRMAN LOCKYER: Other questions.

19 What's been the hardest issue for you to face as a member  
20 of the Board this last year?

21 MR. ROBERTS: I think this issue, and I think because we  
22 all come to it with some strong feelings. I think the potential  
23 benefits out there are enormous, both environmentally and from a  
24 business standpoint. I'd like to see California businesses also  
25 benefit.

26 So, I think without a doubt, we've spent a fair amount of  
27 time on the fuel, though, also, as I mentioned. We spent time  
28 with the people in that industry to make sure that we've learned

1 something from the diesel fuel problem of a few years ago and have  
2 a successful introduction this year of what clearly is going to be  
3 the most significant change.

4 CHAIRMAN LOCKYER: It appears that while progress is  
5 being made, we're not going to make the clean air goals.

6 Any sort of thoughts about what strategies are still  
7 available that might work on either --

8 MR. ROBERTS: Well, I'm not -- there's what we refer to  
9 as the black box. There is still a part of the over-all goal  
10 that is not identified as to how we're going to get there.

11 But as we work through some of the problems, and I've  
12 been involved in one locally where we found out that we were going  
13 to get a much higher savings, for instance, from our local utility  
14 company with respect to pollutants than we had planned. And what  
15 I'm hoping for, if there are maybe a number of areas, and these  
16 are fairly significant, maybe that black box is not as large as it  
17 appears to be right now.

18 But I think we can't lose sight of the fact that we are  
19 making -- we're making strong progress. And I think maybe by  
20 looking at in detail some of these other aspects that we might  
21 find that we can provide the missing part of that plan.

22 CHAIRMAN LOCKYER: Is there anyone present that wishes to  
23 comment, express concerns? Yes, sir.

24 MR. BAUTE: Yes, Mr. Chairman.

25 Good afternoon, distinguished Members of the Committee.  
26 My name is Mark Baute. I'm here both as a California citizen and  
27 as an attorney representing the California renewable fuels  
28 industry.



1 As a matter of protocol, I'd like to start by saying we  
2 neither oppose nor support, but I have some facts that dove-tail  
3 rather directly with questions and statements I've heard, both by  
4 Senator Lewis, Senator Petris, and by Mr. Roberts himself.

5 For the last year, I've been in fairly active litigation  
6 with the California Air Resources Board in an Open Meeting Act  
7 case. And in the course of that case, I've taken the depositions  
8 of Cal-EPA Secretary Strock, the former CARB Board Chairperson  
9 Schafer, the current Executive Director, Mr. Boyd, and three or  
10 four of the staff scientists, in the context of one rather  
11 ambitious pollution reduction initiative sponsored by fed EPA,  
12 called the renewable oxygenate requirement.

13 I guess there's the good news, bad news. Perhaps the  
14 good news is that Mr. Roberts may bring a new perspective to  
15 what's currently happening.

16 The bad news is that the way this Board and this agency  
17 are presently functioning is not anything remotely resembling what  
18 we've heard during the last 30 minutes.

19 I think the record in that case, and I want to share it  
20 would you here, both for purposes of further questions for Mr.  
21 Roberts and later Mr. Silva, there are two problems. One is, the  
22 Board is not functioning as an independent Board at all. In fact,  
23 the Board has recently stated openly that it not an independent  
24 Board. And I have a quote from the Board itself to supply you  
25 with on that.

26 Second, the Board, even if it had the noblest of  
27 objectives, is not active enough for the simple reason that the  
28 agendas for full-blown debate are controlled by lower level staff

1 members. They completely control what issues rise to the level of  
2 a public meeting for full-blown debate.

3 There are critical public policy issues today that never  
4 see the light of day.

5 On the issue of independence, notwithstanding the press  
6 releases of this administration during the ZEV issue that we've  
7 heard so much about, about how Governor Wilson would have to defer  
8 to the wishes of an independent Board.

9 On December 7th of last year in a public filing, this is  
10 a verbatim quote from the California Air Resources Board in the  
11 litigation at the time, represented by the Attorney General's  
12 office. Quote, "Air Resources Board members do not have the  
13 independence that an elected or fixed term board would have, since  
14 they may be removed at any time." That sentence standing alone  
15 may sound benign, maybe potentially dangerous.

16 It's a follow-up sentence that CARB placed in the record  
17 that is much more dangerous. Quote, "The appointed and  
18 at-pleasure status makes it clear that the Board is to carry out  
19 the Governor's policy choices," end quote.

20 The stated position of this Board is, you do what the  
21 Governor wants, when he wants. It's in writing, and it's not in  
22 dispute, no matter what we're hearing now today.

23 Now, that's one problem. A second thing I've noticed in  
24 this case is that even if this Board were functioning as an  
25 independent board and people were making independent judgements  
26 and decisions that may sometimes conflict with the wishes of this  
27 administration, when a sensitive issue like that's on the table,  
28 the agency has managed to find a way to circumvent the public

1 meeting process, and to prevent the Board from even getting access  
2 to it, and, in turn, prevent California citizens from providing  
3 their input on those policies.

4 As a result, public policies can be developed in this  
5 area of air pollution regulations in private, in closed meetings,  
6 because they will never make it to an open meeting.

7 On December 29th, on another public filing, CARB made its  
8 position on this issue also perfectly clear. "The Open Meeting  
9 Act" -- this is a quote -- "does not contain any requirement that  
10 particular issues be addressed at public meetings. It also does  
11 not contain any criteria for determining that an issue is so  
12 important that it must be dealt with at a public meeting." End  
13 quote.

14 Now, in the abstract that may be fine. Here's how it  
15 plays out in the real world. If there is sensitive policy issue  
16 where the Governor's Office, or for that matter, any  
17 administration, wants a particular result, if that is the way the  
18 issue is handled, that administration can get any public policy  
19 result it wants by making sure that it is handled below the Board  
20 level and below the public meeting level by staff members, and  
21 then later published to the outside world.

22 I want to provide you a real world context for how it  
23 happened in this case.

24 In late '93, fed EPA proposed the renewable oxygenate  
25 requirement. Dispensing with the details of the science, the  
26 reason for the initiative was two-fold. One, it's known and  
27 accepted that oxygenates as a gasoline additive reduce toxic  
28 pollutants. They reduce four different kinds of toxic



1 pollutants. You've heard some of the terminology. They reduce --  
2 they can reduce PM-10 emissions, carbon monoxide emissions, NOx  
3 emissions, and what are called volatile organic compound  
4 emissions.

5 But what the fed EPA renewable oxygenate requirement  
6 suggested was that of those oxygenates that are already required,  
7 a precentage, namely 30 percent, would be renewable fuel sources.

8 Now, here's how CARB reacted to that in terms of its  
9 policies. The Western States Petroleum Association had a series  
10 of private meetings with the Board Chairperson and staff member  
11 scientists. That resulted in two policy documents: February 14,  
12 1994 official CARB comments, and a later July affidavit signed by  
13 Secretary Strock on behalf of CARB also purporting to state the  
14 public policies and determinations of the California Air Resources  
15 Board on this federal initiative.

16 Not once was the matter debated at an open meeting. The  
17 only Board member whoever learned about it was the former  
18 Chairperson, whose confirmation was denied. And she, like  
19 everyone else at the California Air Resources Board, went out of  
20 her way to sponsor the views and the policy choices of this  
21 administration and of the petroleum industry.

22 What I think it means in terms of today's public policy  
23 of this agency is that we may have ticking time bomb. These  
24 issues are highly technical. You could see the eyes of Senators  
25 begin to glaze over when we got into technical discussions about  
26 ZEV. You could feel it in the audience. These are very tricky  
27 issues, but if the public policies aren't scrutinized, they're not  
28 even brought to the Board level, and the Board members who were

1 there are not independent, you end up with public policies that  
2 are not well-founded, and that, in fact, have the exact opposite  
3 effect.

4 As an example, we believe that the use of the renewables  
5 can accomplish four policy objectives. It can create an entirely  
6 new industry. We believe that the use of renewables as an  
7 additive can reduce the four kinds of pollution I mentioned.

8 But if the process isn't handled right and the Board  
9 isn't functioning independently, you don't even get that far. And  
10 the debate has yet to happen. And policies, I believe, based on  
11 what I've seen, are being made without the studies or the  
12 empirical evidence to back them up.

13 I'd be happy to entertain any questions.

14 SENATOR BEVERLY: Any Member have any questions? Senator  
15 Ayala.

16 SENATOR AYALA: I have a question.

17 We have a number of letters of support for Mr. Roberts.  
18 I think as of this morning there was no opposition.

19 When did you develop your opposition to the nomination?

20 MR. BAUTE: There is -- my opening statement, there is no  
21 formal opposition or support, merely comment at the request of  
22 Chairman Lockyer.

23 SENATOR AYALA: You're merely stating facts, not  
24 necessarily opposition to the nomination?

25 MR. BAUTE: That is correct, Senator Ayala.

26 SENATOR AYALA: You claim that the Board has not acted  
27 independently. They're all appointed by the Governor.

28 What do you expect? Same with the Board of Education.

1 Every member reflects the thinking, philosophy of the Governor.

2 MR. BAUTE: Here's what I expect.

3 SENATOR AYALA: It was true when Democrats were in charge  
4 of the gubernatorial office.

5 MR. BAUTE: I expect in instances where it's clear that a  
6 pollution control or reduction objective can be met with choice X,  
7 and choice X squarely contradicts the desires of the Governor's  
8 Office, and perhaps also contradicts the petroleum refiners  
9 wishes, that choice X may nevertheless carry the day, and that one  
10 or more Board members be willing to vote for choice X in that  
11 hypothetical, even if it means they may be removed.

12 I don't think we have that today.

13 SENATOR AYALA: Mr. Roberts has the support of the  
14 Environmental Health Coalition, as well as the Industrial  
15 Environmental Association. Isn't that a balance there of some  
16 kind? Two extremes.

17 MR. BAUTE: I think those endorsements are probably  
18 well-founded and genuine, but I'm not convinced that they negate  
19 any of the concerns that I have expressed.

20 SENATOR AYALA: No more questions.

21 SENATOR BEVERLY: Any further questions? Senator Lewis.

22 SENATOR LEWIS: I wanted to ask Mr. Roberts, how much of  
23 this is new to you? How much of this have you heard prior?

24 MR. ROBERTS: How much of this?

25 SENATOR LEWIS: Yes.

26 MR. ROBERTS: This is first time I've heard this.

27 MR. BAUTE: And indeed, in fairness to Mr. Roberts, one  
28 of the problems that I think spent some time trying to point out



1 is that there are public policy issues of significance that are  
2 not making it to the Board level.

3 And Mr. Roberts may end up flying up from San Diego once  
4 a month for a meeting. That does not leave him in a position to  
5 necessarily control what a sophisticated staff chooses to put on a  
6 meetings agenda for purposes of public debate.

7 SENATOR LEWIS: Mr. Roberts, don't the individual members  
8 have the ability to shape the agenda?

9 MR. ROBERTS: I think that we do.

10 I think what we're seeing here is an introduction of an  
11 issue of which I -- I don't want to appear to knowing all that's  
12 going on. It was my understanding that there was a study that was  
13 going on, and I expected that in the future, we would see this on  
14 an agenda.

15 I would assure you that I will look into and be much more  
16 familiar with this and find out. If somebody is holding back on  
17 staff, we'll find it out.

18 I do get a little concerned. I'm part of enough boards.  
19 Occasionally things maybe do get held from you that you should be  
20 seeing.

21 I can assure you that this issue will receive its fair  
22 hearing.

23 SENATOR LEWIS: It's not an uncommon complaint that  
24 certain boards and commissions are largely staff driven, so  
25 perhaps maybe you two can talk a little more after this hearing is  
26 concluded.

27 SENATOR BEVERLY: Senator Petris.

28 SENATOR PETRIS: Well, I think this witness has raised a

1 very important point. We did have the situation where our  
2 Governor strongly attacked and fought against EPA requirements  
3 regarding air pollution. And he was accused at the time of  
4 carrying the banner for the oil companies in this state, instead  
5 of making a better public policy stance.

6 That was James Strock who was the Cal-EPA Secretary, who  
7 issued a press release attacking Vice-President Al Gore for  
8 casting a vote in the U.S. Senate in favor of the federal rule and  
9 joined lawsuit initiated by the oil companies in California.

10 So that kind of thing needs some exploration and  
11 explanation. To me, it looks like the Governor was favoring the  
12 oil companies with the air pollution rather than oppose them and  
13 take a strong stand in favor of the Cal-EPA.

14 Is that your impression? Is that what you're trying to  
15 tell us?

16 MR. BAUTE: It is my impression.

17 To both give Mr. Roberts a fair session and to provide a  
18 little bit of additional information, the study that he's  
19 referring to was a study that was started after the subterfuge on  
20 CARB's response to the ROR rule had already taken place.

21 In more private sessions, CARB was fundamentally accused  
22 of having made conclusions on supposed pollution control impacts  
23 without having done the studies at all and having no data to back  
24 it up, and in fact, having one study in their possession that  
25 contradicted their conclusions. So, policy got made without the  
26 empirical evidence.

27 Now the study is being done as a matter of catch-up.

28 But yes, the answer to your question is yes. I have a

1 very grave concern that pollution control policies that are dense  
2 scientific issues can be glossed over, and you can end up with  
3 policies that aren't closely scrutinized because you have a  
4 sophisticated staff, and you end up with a policy that increases  
5 pollution rather than decreases pollution.

6 SENATOR PETRIS: Do you have any comments on that and on  
7 the specific issue that I raised?

8 MR. ROBERTS: Well, all I can tell you --

9 SENATOR PETRIS: Probably before your time.

10 MR. ROBERTS: A lot of this is. That's why I've  
11 suggested that I'm glad to get together with Mark. Glad to look  
12 into this.

13 I have no interest, other than if this product will work  
14 as an oxygenate and will help to reduce pollution, I'll assure you  
15 that at least this member of the Board will have an interest in  
16 seeing that happen.

17 SENATOR PETRIS: Well, the issue arose when the feds  
18 adopted that after their studies and established the renewable  
19 oxygenates program, which was promptly challenged by the state  
20 through the Governor, he said no, which happened to be same policy  
21 as the oil companies, which raises questions in my mind as to  
22 whether their interests are being served or the state interests,  
23 the public interests.

24 If you haven't encountered it, I would urge you to take a  
25 very good look at that.

26 MR. ROBERTS: There was nobody in the Governor's Office  
27 that has talked to me about this issue, and nobody on our staff.  
28 We haven't had to deal with it as an issue in the last year, but



1 will assure you that I would --

2 SENATOR PETRIS: At the time, it raised questions of the  
3 Board's independence, not just from the Governor, but from the oil  
4 companies. They seemed to be doing bidding of the oil companies,  
5 which is even worse than doing the bidding of the Governor if you  
6 don't agree, because the Governor we can talk to in an elective  
7 setting, elective office setting, but we don't elect the oil  
8 companies.

9 MR. ROBERTS: Mr. Senator, let me tell you, in my  
10 remarks, I said it was my interest not only in my own city to  
11 contribute to cleaning up the air, but in the state. For elected  
12 officials, these are not paid positions. These are positions that  
13 enable us to become more involved in a public policy debate.

14 Today was first time I had heard I could even be removed  
15 prior to the completion of the term. For one, I wouldn't lose a  
16 lot of sleep over being removed for doing what I felt was the  
17 right thing.

18 SENATOR PETRIS: I'm glad to hear that.

19 Now, on another part of the problem, pesticides.

20 The ARB has been urged from time to time to get into  
21 that, and the answer has been, well, that's part of the pesticide  
22 registration, and we don't have jurisdiction. Yet, it's a heavy  
23 polluter in the valleys where it's used.

24 We use more pesticides in this state than a whole bunch  
25 of other states combined. Well, we're a bigger state, we have  
26 more farm land, that's understandable. But it's enormous, and  
27 that stuff is toxic. You know, it can hurt people. It hurts --  
28 it erodes buildings.

1 I remember in your district, San Bernardino -- and I was  
2 very active in this field -- we learned from the scientists and  
3 public reports that the massive clouds of pesticide that were used  
4 in the valley, and winds carried over to the mountains, actually  
5 eroded the buildings in San Bernardino; just ate them up. They  
6 had a lot of problems with it.

7 That's pretty horrible stuff. If it does that, it's not  
8 going to be very kind to your lungs or mine.

9 MR. ROBERTS: I didn't mean to imply that the Air  
10 Resources Board isn't doing anything or doesn't have any  
11 jurisdiction.

12 Again, it's my understanding that there is something in  
13 the works, and that will be before us in the coming year.

14 SENATOR PETRIS: I can understand that some Members might  
15 say, well, that's all under the other agency and we won't bother  
16 with it. But it seems to me, once it gets up there in the air,  
17 it's your baby also. So, I hope they will look into it.

18 MR. ROBERTS: We are also dealing with this at a local  
19 level. I can tell you, as an elected official on the local level  
20 as a county official, we've been looking at at least some of the  
21 pesticides that are being used.

22 SENATOR PETRIS: Thank you.

23 SENATOR BEVERLY: Any further questions of the witness or  
24 of Mr. Roberts.

25 Anybody else in the audience who wishes to be heard in  
26 favor or against the nomination.

27 What's the pleasure of the Committee?

28 SENATOR AYALA: I'll move the nomination of Mr. Roberts

1 to the Air Resources Board.

2 SENATOR BEVERLY: The motion is to recommend  
3 confirmation. Call the roll.

4 SECRETARY WEBB: Senator Ayala.

5 SENATOR AYALA: Aye.

6 SECRETARY WEBB: Ayala Aye. Senator Lewis.

7 SENATOR LEWIS: Aye.

8 SECRETARY WEBB: Lewis Aye. Senator Petris.

9 SENATOR PETRIS: Aye.

10 SECRETARY WEBB: Petris Aye. Senator Beverly.

11 SENATOR BEVERLY: Aye.

12 SECRETARY WEBB: Senator Lockyer.

13 SENATOR BEVERLY: Place the matter on call.

14 MR. ROBERTS: Thank you very much.

15 SENATOR BEVERLY: Proceeding with the agenda, Mr. James  
16 Silva.

17 The rest of these folks are all in support of your  
18 nomination?

19 MR. SILVA: I hope so.

20 SENATOR BEVERLY: Tell us briefly why you think you're a  
21 suitable candidate for this post.

22 MR. SILVA: Mr. Chairman and distinguished Members of the  
23 Senate Rules Committee, for the record, my name is Jim Silva. As  
24 you know, I've been appointed to the Air Resources Board to fill a  
25 seat which is designated a nontechnical slot for a local elected  
26 official.

27 I'd like to start on personal note, and then I will tell  
28 you my qualifications, which I feel will allow me to serve



1 effectively on the Air Resources Board.

2 As a lifetime resident of Southern California, I have  
3 seen many changes in our local environment, including the quality  
4 of the air we breathe. I was born in Fullerton, raised in Garden  
5 Grove, and I've spent 25 years of my married life in Huntington  
6 Beach, where my wife Connie and I have raised our two children.

7 In January of '95, I was sworn in as an Orange County  
8 Supervisor. I might add, I took office one month after the County  
9 declared bankruptcy.

10 Prior to serving on the Orange County Board, I was a high  
11 school teacher and coach for 28 years. In the early '70s, I was  
12 directed many times to cancel football practice because of Stage  
13 Three smog alerts in the South Coast Basin.

14 Thanks to stronger rules and regulations on stationary  
15 and mobile sources, our air is much cleaner and healthier to  
16 breathe. Most of our high school students today are not familiar  
17 with things like smog alerts.

18 But I've also witnessed in recent years many of my  
19 students that have moved from California because their parents  
20 lost their jobs. Jobs that were lost as a direct result of air  
21 quality regulations. Jobs that were relocated out of California  
22 to other states.

23 I hope to be a positive voice for the environment and  
24 economic balance.

25 Previous to my election to the Orange County Board, I  
26 served on the Huntington Beach Planning Commission, City Council,  
27 and was Mayor of Huntington Beach in 1992. I am currently a  
28 member of the South Coast Air Quality Management District's Board

1 of Directors.

2 I have found my time as a member of the Air Resources  
3 Board to be very challenging. The ARB staff has been excellent in  
4 training and preparing me to be a valuable member of this  
5 distinguished Board. I realize that staff is not always right,  
6 but I feel very confident that they are not only experts in their  
7 fields, but extremely open and honest with me. They understand  
8 the issues. I have had on-the-job training at its best.

9 In preparing to evaluate ARB issues, I have been driving  
10 an assortment of cars from the South Coast District fleet.  
11 Included in these have been low emission vehicles, ultra low  
12 emission vehicles, and zero emission vehicles. These experiences  
13 have helped me in making better decisions regarding the latest  
14 technology, especially the status of the battery  
15 technology.

16 A successful launch of the ZEV program depends upon  
17 people's willingness to buy the vehicle. The ability to realize  
18 the emission reduction depends upon the people's willingness to  
19 drive the vehicle.

20 I firmly believe that for a program to be successful, it  
21 will have to be market-driven. Over the past seven years as a  
22 Councilman, Mayor, and Supervisor, I feel I have the reputation of  
23 being fair but tough. There are crucial problems that have to be  
24 solved and a rubber-stamp approach will not work.

25 Even my opponents will tell you that I return all of my  
26 phone calls. I consider communication to be important at all  
27 levels of public service. For that reason, I am extremely  
28 accessible.

1 As a life-long resident of Southern California, my wife  
2 and I some day hope to see our grandchildren raised in Southern  
3 California, a Southern California that is made up of clean air and  
4 economic opportunities.

5 It has been a pleasure serving on the ARB Board this past  
6 year, and I would like to be a part of the solution to the many  
7 air pollution problems that surround all the citizens of  
8 California.

9 Thank you for the opportunity to speak before you this  
10 afternoon.

11 SENATOR BEVERLY: Thank you, sir.

12 Any questions of the nominee? Senator Lewis.

13 SENATOR LEWIS: Just a comment, Mr. Chairman, and that is  
14 that I know Mr. Silva in his capacity as an Orange County  
15 Supervisor.

16 I'm glad that he clarified the fact that he was elected  
17 post bankruptcy. Anybody that could survive tumult of the last  
18 year has to have quite a bit of mettle, and he certainly has done  
19 that.

20 I also want to note that last week at our hearing, I  
21 found fault with our Senate Rules appointment to the South Coast  
22 Air Quality Management District on the grounds that I thought she  
23 was one of the majority that had collectively thumbed their noses  
24 at the Legislature by not wiping out once and for all the mandated  
25 trip reduction plan in the South Coast District.

26 I was pleased to note that Mr. Silva was one of the  
27 minority that did uphold the role of the Legislature and voted  
28 against the adoption of that plan.



1 I strongly support Mr. Silva's nomination.

2 SENATOR BEVERLY: I see he also the the support of  
3 Supervisor Bergeson, a former colleague of ours.

4 Any further questions?

5 MR. SILVA: Mr. Chairman, if I may make a comment, I have  
6 some people with me from Southern California that have an airline  
7 flight. Would it be possible to have them speak?

8 SENATOR BEVERLY: I think so. Any problem?

9 Any of those who wish to testify that have to leave,  
10 please come forward.

11 MR. GREEN: Good afternoon, honorable Members of the  
12 Committee.

13 My name is Peter Green. I'm on the City Council of the  
14 City of Huntington Beach. Jim and I have served together for  
15 several years on that council.

16 I have found him to be at times a formidable enemy, and  
17 other times a valient opponent, and sometimes -- and always a good  
18 friend.

19 And I'm here to support the letter that I have written if  
20 you wish further comments.

21 I certainly strongly support his confirmation to this  
22 Board.

23 SENATOR BEVERLY: Thank you very much.

24 Any questions of the witness? Anybody else.

25 MR. TRUDELL: Good afternoon. I should say evening  
26 almost.

27 Mr. Chairman And Members of the Committee, I'm Alan  
28 Trudell. I'm here representing the Garden Grove Unified School

1 District in support of Supervisor Silva's confirmation to the Air  
2 Resources Board.

3 As he stated earlier, Jim is a long time community  
4 member. I know him better as a tireless supporter of public  
5 education.

6 Prior on his election to the Orange County Board of  
7 Supervisors, he served the young people of the Garden Grove  
8 community ably for 28 years as a high school civics and economics  
9 teacher for our school district. And most recently, Jim and his  
10 staff have been instrumental in representing the unique needs of  
11 public schools, and particularly those in Orange County, as Orange  
12 County's representative to the South Coast Air Quality Management  
13 District Board of Directors.

14 His responsiveness as a leader, and his compassion for  
15 the children, are evident as he helps craft environmental policy  
16 for the South Coast Basin. We are sure he'll carry his dedication  
17 and understanding to the Air Resources Board.

18 And again, we want to strongly endorse his confirmation  
19 to the Air Resources Board.

20 I'll be happy to entertain any questions that you may  
21 have.

22 SENATOR BEVERLY: Any questions.

23 Thank you, sir.

24 MR. TRUDELL: Thank you, Mr. Chairman.

25 SENATOR BEVERLY: Next witness.

26 MS. MORRISON: Good afternoon, Mr. Chairman and Committee  
27 Members.

28 My name is Adrienne Morrison. I'm the Executive Director

1 of an environmental group called the Amigos de Bolsa Chica in  
2 Huntington Beach. We are very proud to be able to support his  
3 appointment to this position.

4 We find that he's always been fair, and he's been  
5 reasonable. He returns his calls. He's had a good staff who's  
6 worked with us both through the city and the county level. It's  
7 with his support that we've been able to forge a plan that's gone  
8 forward with Bolsa Chica that was just decided last week.

9 So, we do endorse his appointment to this  
10 Board.

11 Thank you.

12 SENATOR BEVERLY: Thank you very much. Any questions?  
13 Apparently not.

14 Anybody else?

15 SENATOR AYALA: Question for Mr. Silva.

16 SENATOR BEVERLY: I think Senator Petris was in  
17 order.

18 SENATOR PETRIS: I'm curious about the job losses. Can  
19 you identify those in more detail?

20 MR. SILVA: Yes. We have -- I teach in a school of  
21 approximately 80 percent minority, and the kids move in and out  
22 all the time. And when they do leave, oftentimes they'll come up  
23 and say, we're leaving because of my father's job is no longer  
24 there.

25 Three years ago, we were in Colorado Springs, and I  
26 noticed that there was a lot of building going on. I've asked the  
27 people there, I said, oh, I can't believe how Colorado Springs is  
28 really growing. They said yes, we received a lot of businesses



1 from California that have relocated from California to Colorado.  
2 And it's a variety of areas.

3 I do feel that there has to be a very strong balance  
4 between the environment, because the environment has a cost, and  
5 health issues, that if people are sick and in the hospital, if  
6 people die, that has a financial impact. And we balance that  
7 against the jobs that we need in Southern California, especially  
8 in Orange County, to help solve the financial crisis that's taking  
9 place there right now.

10 SENATOR PETRIS: You didn't elaborate on the cause of  
11 their moving. How do you know they moved because of --

12 MR. SILVA: Being in the same school for 28 years, I do  
13 get to know the families, and it has been brought up that because  
14 of the requirements that have been placed on business, jobs have  
15 disappeared.

16 And I've found that to be true in working with the Air  
17 Quality District, AQMD. I've had people on staff there say that  
18 there have been times that there's been over reaction, and what  
19 they're doing now is trying to make sure that we have a healthy  
20 environment and a healthy economy.

21 SENATOR PETRIS: I'd like to get some verification of  
22 that, because I've heard this story before. It was used  
23 extensively in L.A. for a while: a lot of companies are moving  
24 out of L.A. because of the smog.

25 I checked out one or two of them who went to Texas. And  
26 Texas said, we don't have these smog regulations here, so come on  
27 down to Texas. It turned out that wasn't the reason they moved at  
28 all.

1 In another case, the company made -- you see, companies  
2 do this. They make a public announcement as to why they're  
3 leaving. They may not like the local softball team, for all I  
4 know, and that's the real reason, but the public explanation they  
5 give is smog, or labor relations, or some other problem that isn't  
6 remotely related.

7 Another one I checked out in our area which made a public  
8 statement of that kind which excited my interest, it turned out  
9 that the decision for moving their plant had nothing to do with  
10 local conditions. It was a consolidation decision by the national  
11 board back in Tennessee, and they were consolidating in a certain  
12 place and pulling people in from all over the country. Yet they  
13 lied in their public statement and said, "We're leaving here  
14 because labor relations are no good. The unions are too strong."  
15 That's what they said in that particular case.

16 So, I'm very suspicious of the public reason given, you  
17 know, by a particular company as opposed to the real reason, the  
18 underlying causes.

19 So I'm wondering how many details you have in those  
20 particular cases that verifies that they're actually leaving for  
21 the reasons stated?

22 MR. SILVA: As an elected official, I know that I've  
23 talked to many people over the last seven years that have told me  
24 one thing, and I have found out later on that that was not true.  
25 I wish that there was some way that when people testify before my  
26 board, that a light would come on if they're being honest or if  
27 they're not, but that doesn't exist.

28 I just know of situations where families have had to

1 move; they've sold their house, often times at a loss, and it's  
2 been told to me that the reason is, the jobs no longer exist.

3 SENATOR PETRIS: I know, but why doesn't the job exist?  
4 Why is the company leaving? Is it base closures in the area? Is  
5 it any number of other things? Is it a real estate change, that  
6 costs are going up and they can't afford to stay there? There are  
7 a lot of different reasons that cause people to leave. What were  
8 the reasons in those cases?

9 MR. SILVA: I couldn't cite you any specific examples  
10 because I haven't talked to the employees -- excuse me, the  
11 employers, but I have talked to the students, and I have talked to  
12 parents. And I've never -- at that time I was more concerned with  
13 trying to get across my economics lessons than trying to find out  
14 why they were leaving.

15 But I've been told that because of tighter regulations in  
16 Southern California, the jobs no longer exist.

17 SENATOR PETRIS: Okay. Getting back to the Texas one,  
18 you're talking about tighter smog control regulations. I come  
19 from another direction.

20 When I first got into this problem, smog in L.A. was the  
21 cause, the fastest rising cause of death in L.A. County among  
22 certain population ages, especially elderly, who might have had a  
23 heart problem. It polluted the blood. It accelerated the deaths  
24 and so forth.

25 But that was not ever given by the Chamber of Commerce as  
26 the reason. They just said we're leaving because of this or  
27 that. It didn't say anything about how horrible the problem was  
28 to people's individual health. They were fighting the



1 regulations.

2 So, in a statement during one of our committee meetings,  
3 when the committee was informed that a certain company left L.A.  
4 and went to Texas, we inquired about the degree of the problem in  
5 L.A. And it turned out to be pretty severe, but they didn't have  
6 any information on what the situation was in Texas, other than the  
7 Chamber of Commerce brochures that said, we don't have that kind  
8 of problem here, so come on out to Texas.

9 Now, the parting shot is what disturbs me. The parting  
10 shot made by the company, which I found is not always reliable.  
11 So, I made a statement that drew some flak, which was, well, if  
12 it's true that you're poisoning the atmosphere in this community,  
13 good riddance. If you have to poison somebody, go poison the  
14 Texans who have invited you.

15 That didn't sit too well. I got letters from Texas on  
16 that. They say, why do you want them to poison us? And I to  
17 write back and say, well, here's the rest of the statement.

18 So, that's why I raised the question. It's rather a  
19 serious one. I don't mean to make light of it.

20 MR. SILVA: I know what it's like going out to a football  
21 practice, only to have the principal walk out and tell you that  
22 practice is over. And you know exactly what's going on. Your  
23 lungs hurt, your eyes are red.

24 And in the last several years, we haven't had that  
25 problem, and I know it's because of regulations, and they have to  
26 be there. I firmly agree.

27 SENATOR PETRIS: Well, listen, when I was working on  
28 this, they did a survey of certain communities in L.A. and the

1 most affected areas. The seaside areas were okay because of the  
2 sea breezes, but internally, they couldn't find a twelve-year-old  
3 child anywhere in those communities who was born and raised in  
4 that community that did not already have objectively measured  
5 signs of lung damage due to air pollution.

6 That's one of the things that excited my interest even  
7 more. I'd been working at it for quite awhile.

8 MR. SILVA: That, too, Senator, I might add, is a cost to  
9 all of us.

10 SENATOR PETRIS: Of course it is, the whole state.

11 SENATOR AYALA: I have one question.

12 What is the status of the zero emission vehicle program,  
13 and does the ARB have a position on it?

14 MR. SILVA: Right now it is coming back before the Board  
15 in March.

16 I've had the opportunity to drive two of the vehicles,  
17 and I believe in them. I feel that one day in Southern  
18 California, we're going to see that to be a very common vehicle.  
19 I think that right now there's some stumbling blocks or hurdles  
20 that we have to get through, but the Board will be taking action  
21 on this in March.

22 Personally, I like the vehicles, but I do have a concern  
23 about the cost, number one, and number two, the range of the  
24 vehicle.

25 SENATOR AYALA: But in March, there'll be some action  
26 taken by the ARB --

27 MR. SILVA: There will be.

28 SENATOR AYALA: -- on that policy?

1 MR. SILVA: Yes.

2 SENATOR AYALA: Thank you.

3 SENATOR BEVERLY: Any further questions? Senator Petris.

4 SENATOR PETRIS: I don't mean to belabor this, but in our  
5 background material here, I just want to point out that it says  
6 that 90 percent of all Californians live in areas that exceed  
7 federal and state air pollution limits. In the L.A. air basin, it  
8 exceeds the federal ozone smog standard by up to 200 percent on  
9 roughly one half of the days each year. So, every other day,  
10 they're exceeding air pollution.

11 This excessive pollution causes damages to public health,  
12 to crops, to buildings, and the environment generally.

13 I don't want to keep harping on it, but it's a very, very  
14 big problem.

15 But you said in your opening it didn't seem to be -- the  
16 problem seemed to be they're leaving because the smog regulations  
17 are too tough. If I lived in an area, I know you're not from L.A.  
18 but where are you from?

19 MR. SILVA: I'm from Huntington Beach.

20 SENATOR PETRIS: You're out in the safe area, where the  
21 breezes take care of it.

22 But knowing how harmful this stuff is, the impact on the  
23 health of people, it goes unheralded. An elderly citizen dies  
24 who's had a heart disease, the death certificate doesn't say  
25 smog. But if you analyzed the doctor's report, you'll find that  
26 the blood condition was totally aggravated and made fatal by the  
27 additional addition of poison in the form of smog that enters the  
28 more frail systems of the elderly. It also hurts children a lot.



1 They're very susceptible.

2 MR. SILVA: Children and our senior citizens are probably  
3 affected the most.

4 SENATOR PETRIS: Yes.

5 Now, on the problem of businesses leaving, would you  
6 explain? I didn't quite catch your opening statement in which you  
7 said a lot of businesses are leaving because of tough air  
8 pollution regulation? Is that what you said.

9 MR. SILVA: Yes.

10 SENATOR PETRIS: Does that mean you advocate loosening  
11 the regulations?

12 MR. SILVA: Not at all, but I do feel that there are  
13 solutions out there that we have to continue to find that would  
14 solve the problem and provide us with a safe, healthy environment,  
15 as well as a safe healthy economy.

16 SENATOR PETRIS: You're working on that?

17 MR. SILVA: Very much.

18 SENATOR PETRIS: Okay. Thank you.

19 SENATOR BEVERLY: Any further questions.

20 Anybody in the audience who wishes to testify for or  
21 against? The witness here who was present earlier, he left.

22 What's the pleasure of the Committee.

23 SENATOR LEWIS: Move confirmation.

24 SENATOR BEVERLY: Senator Lewis moves confirmation. Call  
25 the roll.

26 SECRETARY WEBB: Senator Ayala.

27 SENATOR AYALA: Aye.

28 SECRETARY WEBB: Ayala Aye. Senator Lewis.

1 SENATOR LEWIS: Aye.

2 SECRETARY WEBB: Lewis Aye. Senator Petris. Senator  
3 Beverly.

4 SENATOR BEVERLY: Aye.

5 SECRETARY WEBB: Beverly Aye. Senator Lockyer.

6 SENATOR BEVERLY: Place the matter on call, please.

7 [Thereupon this portion of the  
8 Senate Rules Committee hearing was  
9 terminated at approximately 4:12 P.M.]

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## P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN LOCKYER: Appointees, we start, I guess, with Mr. Campbell. Good afternoon.

MR. CAMPBELL: Good afternoon.

CHAIRMAN LOCKYER: Do you want to begin with any opening comments at all? You don't have to.

MR. CAMPBELL: I'll take questions.

CHAIRMAN LOCKYER: Well, how long have you been doing this?

MR. CAMPBELL: I started out in the early '80s as an appointee on the Master Plan Review Commission, and I was Vice Chair of that Commission and then later acting Chair.

When we were through, we had about a three-and-a-half year budget. I was appointed to CSU Board about nine years ago. After a year, I became Vice Chair. I was Vice Chair for couple of years and then I was Chair for two years and headed all the major committees. This is my first reappointment. Total time about twelve years.

CHAIRMAN LOCKYER: How much time does it take, a week or month or whatever, to serve on the Board?

MR. CAMPBELL: That's a good question. A great deal. If I'm chairing a presidential search, it can take eight days a month.

CHAIRMAN LOCKYER: Hopefully, you don't have to do that too often.

MR. CAMPBELL: I just chaired San Diego and also San Jose.

1 CHAIRMAN LOCKYER: For the campus itself?

2 MR. CAMPBELL: For the campuses, and that does take a  
3 lot of time.

4 But normal -- I think normally, at least a week a  
5 month.

6 CHAIRMAN LOCKYER: A week --

7 MR. CAMPBELL: A month.

8 CHAIRMAN LOCKYER: In the years you've be there, what  
9 was the toughest decision? Any that stand out?

10 MR. CAMPBELL: The toughest decision was probably the  
11 time when we changed Chancellors. That was the toughest  
12 decision that we have had to make.

13 CHAIRMAN LOCKYER: Partly getting rid of the old one  
14 and then hiring the new one?

15 MR. CAMPBELL: Correct. It was a time when our Board  
16 had to rethink who we werè and what we wanted to see this system  
17 be.

18 CHAIRMAN LOCKYER: You may well have seen, I forget if  
19 it was the Sacramento Bee; I think it was. There was a rather  
20 complimentary article in the last day or two, sort of a  
21 comparison of the relative calm around your Board in upper  
22 levels of governance relative to the UC system.

23 So, it seems like somebody's done something to maintain  
24 quietude.

25 MR. CAMPBELL: I always appreciate those articles when  
26 they're positive, yes. I've read the other kind.

27 CHAIRMAN LOCKYER: What would you anticipate are the  
28 major challenges of the next few years?

1 MR. CAMPBELL: I sense that we're back on a firm --  
2 somewhat firm footing financially.

3 I would personally like to see us be able to compensate  
4 our faculty and staff more. I think they've gone four-five  
5 years without adequate compensation.

6 And I still think that one of the largest challenges  
7 that we face is completing the reinvention of how we deliver  
8 education in this new economic environment. I think that's our  
9 real area that's going to significantly make a difference to us  
10 over the next ten years. This started three-four years ago, and  
11 I think we're halfway into it. I think how we do in that area  
12 will determine the quality of faculty we can hire, which is  
13 maybe the single most important ingredient.

14 CHAIRMAN LOCKYER: Are there questions from Members?  
15 Senator.

16 SENATOR PETRIS: I'm interested in the fee structure  
17 and financial aid for the students. Somewhere along the line,  
18 Cal State decided, the trustees, that they were going to charge  
19 one-third of some figure representing the cost. Students would  
20 have to pay one-third. That was never done by statute or  
21 authorized by the Legislature.

22 I'm wondering how they arrived at that? Can you  
23 enlighten me on that?

24 MR. CAMPBELL: My perception is that we, about four or  
25 five years ago, were faced with a real reduction in state  
26 support, and at the same time had to deal with the whole issue  
27 of our fee structure. There were a lot of surveys done by CPEC  
28 and others, trying to allow some type of a working formula that



1 got our institution back to being one where there was some type  
2 of predictable annual increase, instead of jumping all over the  
3 board, as we had done that for two years. That policy was a  
4 result of that type of thinking.

5 I think we're really -- my personal -- I'm not for one  
6 that believes in higher fees because the fees restrict access.  
7 I don't think that's our mission. It isn't our mission. We've  
8 raised our aid significantly. When we first had our fee  
9 increase, the large one about four years ago, Dr. Hampton and  
10 myself reached a compromise with Barry, whereby a third of any  
11 of the increases we had would be tied directly to student aid.  
12 And as a result, we've increased that substantially.

13 This year and last year, with the help of the  
14 Legislature, we've been fortunate in being able to not have  
15 these fee raises, so, hopefully we will be able to keep it in  
16 the norm.

17 I think I was looking at this about a week ago. After  
18 we had gotten through this real time of uncertainty in  
19 California, our fee structure still at the lowest in the United  
20 States. We're still down at the bottom. I think there's only  
21 one institution that I know of in Texas that might even be  
22 lower. So, I hope that we can keep it as low as we can.

23 SENATOR PETRIS: That's your policy?

24 MR. CAMPBELL: Yes, it is my policy.--

25 SENATOR PETRIS: Well, I'm glad to hear that. It's  
26 nice to know that we're at the lowest. I think we always have  
27 been.

28 MR. CAMPBELL: Always have been.

1           SENATOR PETRIS: That's our secret to having our system  
2 accessible to the largest number of qualified students at both  
3 the UC and Cal State.

4           How do you read the rest of the board? Are they of the  
5 same sentiment?

6           MR. CAMPBELL: Absolutely, absolutely. We worked very  
7 hard this year to try to do what we could in helping to receive  
8 extra funds from the Governor's budget to supplement that.

9           I think now that we've done it, though, the real  
10 problem, as I mentioned earlier to Senator Lockyer, is that we  
11 need to look at some of the faculty compensation and the staff  
12 compensation issues.

13          SENATOR PETRIS: Apparently we haven't been too helpful  
14 to you in the long haul. In '93, the Legislature established  
15 another fee for the second time around. If you already have a  
16 Bachelor's degree, you come back for more study, you get hit  
17 pretty hard on the fee. That resulted in a lot of students  
18 dropping out. They're not coming back in.

19          Is that still a problem?

20          MR. CAMPBELL: I think it's a problem. This is a  
21 personal observation in people that change careers. I think  
22 today a lot of people that graduated maybe fifteen years ago  
23 decide they want -- they have no future in their current  
24 industry, and they go back to recareer, whether it be nursing or  
25 some other area that there might be a perceived demand, have  
26 more problems than they would have before. It certainly cuts  
27 down on the ability to recareer.

28          SENATOR PETRIS: Kind of gives a message that you get

1 one shot at it. You're not welcome to come back.

2 MR. CAMPBELL: Well, there is some thinking also that  
3 when the student is younger, it's harder to get through the  
4 first time, and at least they have their degree and are able to  
5 make more of a living, and are maybe able later on to pay a  
6 somewhat hire fee.

7 SENATOR PETRIS: I'm sure a lot of the students, I  
8 don't know what the latest studies, if there are any, show, but  
9 students are pretty young when they first start out at Cal  
10 State, even though the average age is higher than the UC. But a  
11 lot of them are bewildered about what they're going to study.  
12 you're looking at one of them. I'm not sure I went into the  
13 right field yet.

14 When I was at UC, I wound up being a journalism major,  
15 and I studied that very hard. Then I went to law school, and I  
16 haven't worked one day as a journalist, much to my regret,  
17 sometimes to my regret. I don't regret what I did afterward.

18 I'm thinking of the flexibility and the openness, and a  
19 sense of having students feel welcome to come back without  
20 getting socked with this enormous additional fee.

21 Of course, that's our doing, not yourself.

22 Do you believe the Trustees would prefer to do without  
23 that?

24 MR. CAMPBELL: I can't speak for all of them, but I  
25 would. I don't think it's a significant income generator as  
26 much as it is a deterrent to people that want to recareer.

27 SENATOR PETRIS: But it has had some impact on the  
28 careers of students.



1           MR. CAMPBELL: I don't know the numbers. My wife is  
2 currently at nursing school at age 54 at Long Beach State, so I  
3 see the students through her eyes. That's where I see it.

4           SENATOR PETRIS: Well, that's pretty accurate, coming  
5 from a student, at least that one campus.

6           CHAIRMAN LOCKYER: Senator, may I pop in.

7           Why don't you bring us up to date on the affirmative  
8 action issue at the State University system. I know there's  
9 been sort of a broad executive order from the Governor's Office  
10 which, as I understand the way this works, the system can accept  
11 or not.

12           Anyhow, what's happening in that area?

13           MR. CAMPBELL: Well, as I recall the letter, it  
14 requested that we review our policies and make certain changes,  
15 and we did that. We went through, and I think it was about six  
16 weeks later, received a book, three-four inches thick. It tried  
17 to sort all out all those areas where there could be some area  
18 of concern in response to the letter.

19           Some programs are state mandated. Contractors, you  
20 know, small minority contractors, there's some federal law  
21 involved. It's kind of a lot of legalese.

22           But in general, the thing that I'm confident in is that  
23 we didn't have racial based choices to begin with in admissions  
24 policies, or we never did have a quota system. And so, there  
25 was really nothing, after we finished the review, that really  
26 applied to us.

27           CHAIRMAN LOCKYER: Senator Ayala.

28           SENATOR AYALA: Senator Petris, have you finished?

1           SENATOR PETRIS: I wanted to go into another area, but  
2 I'll wait, that's okay.

3           SENATOR AYALA: I just was going to follow up on  
4 Senator Lockyer on affirmative action.

5           The Governor has signed that and required all state  
6 agencies to comply with the affirmative action of his views, and  
7 it's not binding on you folks, but do you have plans to comply  
8 with that order?

9           MR. CAMPBELL: It's my feeling that we're in  
10 compliance.

11          SENATOR AYALA: You will comply?

12          MR. CAMPBELL: Yes, we will, or we have, or we are. I  
13 think it's all the same.

14          We have an admissions standard in our institution that  
15 takes the top third. That's a Master Plan produced formula.  
16 CPEC callibrates that every so often, and we produce a pamphlet,  
17 and it's distributed. And that's how we base our admissions on.

18          There's not a racial question involved in it. So, I  
19 don't think the kinds of issues that at least I've read about  
20 that have faced the UC system have faced our system.

21          SENATOR AYALA: On another area of remedial instruction  
22 in English. I understand that you discussed that quite  
23 thoroughly last week, and the idea was to discontinue the  
24 remedial courses for some of those students.

25          I understand about 50 percent of the students entering  
26 the CSU are short on reading English, and they need some help.

27          Do you folks intend to discontinue that program?

28          MR. CAMPBELL: No. What we were concerned about was a

1 continuing increase in the need for remediation among our  
2 entering students, and it reached -- blended between math and  
3 English a percentage that was in excess of 40.

4 We've just spent about ten months looking at the  
5 question and seeing how our system fit in that, and how we could  
6 help.

7 The answer to the question is, after looking at it and  
8 holding some hearings, and spending a lot of time with the K-12  
9 people, we understood the question well enough to know what  
10 areas we could -- what steps we could take as an institution  
11 that would help, and work with Delaine Eastin and the  
12 Superintendent and the K-12 to see what steps they could take  
13 with a joint effort.

14 And then, from everything from doing a better job in  
15 our education of our teachers, we produce probably 70 to 75  
16 percent of all the teachers in the state, to helping to review  
17 our testing. When we give our tests, there's a lot of types of  
18 things we can do to get at the remediation issue.

19 We can also be certain that our -- we're spending a  
20 year reviewing our standardized testing to be certain that the  
21 tests we give are appropriate and should be doing the job  
22 they're doing.

23 It's our intent that, working with the K-12, that we  
24 can be effective in allowing the high school students to have  
25 less of a need for remediation. Our whole goal is to be able to  
26 educate more students at the end of this process.

27 And no, we are not stopping any courses dealing with  
28 remediation. There's no -- no, the answer's no.



1           SENATOR AYALA: I understand that if this goes through,  
2 by the year 2001, all remediation will cease except, according  
3 to what I'm reading here, it will continue for affirmative  
4 action programs for unrepresented minorities, athletes, artists,  
5 and musicians under that proposal.

6           If you're going to start remedial for some students but  
7 others will not be, I don't understand what you're doing here.

8           MR. CAMPBELL: I'm really at a loss. We're not  
9 changing any current policies at all.

10          SENATOR AYALA: By the year 2001, I have here.

11          MR. CAMPBELL: Way back about ten months ago, one of  
12 the proposals that was brought up at a board meeting was, is  
13 there a way that we can end the need for remediation in five  
14 years, which I believe was 2001. But after the ten-month  
15 process, that original policy was thrown away, and there's no --  
16 that's not applicable anymore.

17          SENATOR AYALA: My question was, it'll be terminated  
18 for everyone except those students admitted under affirmative  
19 action programs for unrepresented minorities, athletes, artists,  
20 and musicians.

21          MR. CAMPBELL: I'm just not aware at all what --

22          SENATOR AYALA: You're not aware at all, by  
23 Mr. Pesqueira? He made that proposal, I understand.

24          MR. CAMPBELL: He may have made that proposal, but  
25 that's the one that we didn't accept. It has not been  
26 accepted.

27          SENATOR AYALA: If it is, it's going to be selective?

28          MR. CAMPBELL: There's nothing going to be selective.

1 Nothing will be done. Nobody will be affected.

2 SENATOR AYALA: Thank you.

3 MR. CAMPBELL: Thank you.

4 SENATOR PETRIS: On that same subject, I think it comes  
5 up on just about all the nominees for the Board.

6 The Cal State system is the one that turns out most of  
7 our teachers. You know, we used to call it the Teacher's  
8 College system. Yet we continue to have, you know, we do a good  
9 job, I hope, at the Cal State level to turn out all these  
10 teachers. They go and teach in our schools.

11 And yet, large number of the students still need some  
12 remedial work. There's a gap there, it seems to me, that we  
13 ought to be able to fill somehow or another.

14 The problem's at the K-12 level. It's not your level,  
15 but you have to inherit the problem and try to correct it.

16 Is there any ongoing communication between the  
17 university system and the high school people, or junior high, on  
18 this particular problem?

19 MR. CAMPBELL: Yes. I think that was one of the more  
20 exciting things that I've seen happen in education in the last  
21 12-13 years is the relationship that we've created with the  
22 Superintendent of Public Instruction.

23 When I worked on the Master Plan, here we were,  
24 reviewing the different institutions and working with the  
25 coordinating boards, and the one thing I remember very vividly  
26 is, nobody talked to anybody. There was a round table  
27 somewhere, and the Legislature was the body that sat down and  
28 was able to coordinate a little bit. And CPEC had that job, but

1 they were usually only active in deciding where to build new  
2 institutions.

3 But today, I think there's a -- it's the first time  
4 I've seen it, some ongoing, very deep dialogue between our  
5 institution and Delaine Eastin and that Board. We've had some  
6 joint meetings. We've gotten to know each other, and their  
7 policies are jointly being created, the testing.

8 I think we'll be able to come out of this with some  
9 standardized testing that both institutions concur with, so  
10 there's no bickering on whether the standards that we set are  
11 going to be right or wrong.

12 If we both accept the standards and implement them, get  
13 tests starting from the third grade through, I think we can  
14 create a system whereby we can accomplish something.

15 No, I'm optimistic about it and encouraged.

16 SENATOR PETRIS: It's not asking too much that we have  
17 a system that sends young people into the world after the  
18 twelfth grade who can write -- who can read and write.

19 You know, we get complaints from employers. They can't  
20 fill out the applications. It's very distressing at times.

21 Do you have a time table, 2001, is that what you're  
22 talking about?

23 MR. CAMPBELL: Well, that's the beginning of it.

24 What we've done is taken a period of roughly a decade  
25 and tried to implement programs. The first one that we're going  
26 to do is the testing area, and we hope we'll be complete -- we  
27 will be complete with that within about eleven months. We want  
28 to agree upon some standards of testing, and then we'd like to



1 see the other -- the K-12 start to agree on some standards for  
2 testing.

3 I think once we have the math test, we're going to give  
4 these tests to students before they graduate from high school.  
5 One of the problems now is, we don't do that. For instance, the  
6 math test should be given at the end of the eleventh grade when  
7 they finish taking math. We ask them to take it two years  
8 later, and I'm not so certain that I'd want to take that test  
9 two years after I had calculus or advanced algebra.

10 I was a lawyer also. I think I took that route to avoid  
11 math. But I think --

12 SENATOR PETRIS: I wouldn't want to take it the day  
13 after school closes.

14 MR. CAMPBELL: I think there's a lot that we can do  
15 that'll help. But I think mainly we need to have standards,  
16 and we need to agree what the standards are, and we need to  
17 enforce the standards. I think that's the way I look at the  
18 problem.

19 SENATOR PETRIS: There's been a lot of talk of that.  
20 We don't seem to have reached that point yet for some reason or  
21 another. I don't know whether it's lack of action on our part,  
22 or we're not being prodded and guided sufficiently by the  
23 educators or what. It's very disappointing and very  
24 distressing.

25 It seems is to me the absolute minimum we should expect  
26 is that everyone that comes out of high school can sit down and  
27 write a decent letter, fill out an application. Otherwise,  
28 they're dysfunctional the rest of their lives.

1           Do you feel optimistic about the results of what is  
2 happening now?

3           MR. CAMPBELL: I feel very optimistic about it from our  
4 side.

5           I can't -- I don't know what the state faces  
6 financially. I don't know how we are going to resolve the  
7 influx of students. It's going to overwhelm people. Those are  
8 issues I feel I don't have control over.

9           But as far as the academic side of the house, and the  
10 kinds of policies that I think we need to have to implement  
11 standards, I think we're on the right track, and I think it'll  
12 be accomplished.

13          SENATOR PETRIS: I hope so. Thank you.

14          CHAIRMAN LOCKYER: Other questions.

15          Anyone present who would wish to make any comment?  
16 Yes, sir.

17          MR. CRIST: Very briefly, Mr. Chairman, Members.

18          My name is Bill Crist. I've been privileged to be a  
19 professor of economics in the State University since 1969 and  
20 have been the president past, and am now Chair of the  
21 Legislative Committee of the California Faculty Association.

22          As you know, we represent all of the faculty at the  
23 California State University under the law.

24          I would like to speak to the confirmation of Trustee  
25 Campbell. It's important to the faculty that they be able to be  
26 in communication with individual trustees. As some of you know,  
27 in past years we've had some periods of tough sledding.

28          I would like to report that Trustee Campbell has been

1 most open to us, has made himself available for discussions.

2 We would like to see the trustees be even more open  
3 during periods of negotiations between the faculty and the CSU.  
4 Sometimes even the trustees are not totally in the loop as much  
5 as they might be, with mid-management people doing their job,  
6 and sometimes, though, interfering with the smoothest kind of  
7 progress and operation.

8 But we have no bad news to deliver on Trustee  
9 Campbell. We believe that he's done an admirable job, and we're  
10 certainly in supports of his reconfirmation.

11 CHAIRMAN LOCKYER: Thank you, Mr. Crist. Also, we'll  
12 take this opportunity to congratulate you on your re-election as  
13 Chair.

14 MR. CRIST: Thank you. I wear that hat some of the  
15 times.

16 CHAIRMAN LOCKYER: You're wearing lots of  
17 hats.

18 MR. CRIST: We do look after your pension, sir.

19 CHAIRMAN LOCKYER: The haberdasheries are pleased with  
20 your service. Thank you.

21 MR. CRIST: Thank you very much.

22 CHAIRMAN LOCKYER: Anyone else.

23 What's the pleasure of the Committee?

24 SENATOR BEVERLY: Move we recommend  
25 confirmation.

26 CHAIRMAN LOCKYER: We have that motion before us. If  
27 you'll call the roll.

28 SECRETARY WEBB: Senator Ayala.



1 SENATOR AYALA: Aye.

2 SECRETARY WEBB: Ayala Aye. Senator Lewis. Senator  
3 Petris.

4 SENATOR PETRIS: Aye.

5 SECRETARY WEBB: Petris Aye. Senator Beverly.

6 SENATOR BEVERLY: Aye.

7 SECRETARY WEBB: Beverly Aye. Senator Lockyer.

8 CHAIRMAN LOCKYER: Aye.

9 SECRETARY WEBB: Lockyer Aye.

10 CHAIRMAN LOCKYER: Let's leave it open so Senator Lewis  
11 can record.

12 Denny, good luck.

13 MR. CAMPBELL: Thank you, sir.

14 CHAIRMAN LOCKYER: Okay, Ms. Fallgatter is the next  
15 appointee.

16 Good afternoon. Do you wish to start with any comments  
17 at all?

18 MS. FALLGATTER: Maybe I would just be brief.

19 You've been able to ask Denny all those questions. I'll  
20 just give you a fast run-down.

21 CHAIRMAN LOCKYER: Did you hear any of his answers you  
22 disagreed with?

23 MS. FALLGATTER: No, as a matter of fact, I agreed with  
24 everything that he had to say.

25 CHAIRMAN LOCKYER: Then we don't need two Trustees.

26 [Laughter.]

27  
28 CHAIRMAN LOCKYER: Please, go ahead.

1 MS. FALLGATTER: Thank you very much. Denny and I were  
2 here just about eight years ago, and we've seen a lot of  
3 transformation in our system. When we first came on the board,  
4 it wasn't as cohesive as it is now. As he mentioned, we went  
5 through removing one chancellor, and being very, very fortunate  
6 to find Barry Munitz, who's running our -- and leading us  
7 today.

8 In that period, there were times in Sacramento where we  
9 didn't have such a good image. And today our image is good.  
10 Our ability, our cohesive board, our leadership with our  
11 administration, our faculty, our staff, our students, it's  
12 marvelous. And I would like to serve another term on this board  
13 because it's like we've created the stability level, and now we  
14 can go further with helping to educate populous of the State of  
15 California how important and what a priority education should  
16 be.

17 Thank you.

18 CHAIRMAN LOCKYER: At the risk of prejudicing Senator  
19 Petris's perspective, I want to add to your list of supporters  
20 that we've indicated on the record. George Marcus prevailed on  
21 me last Thursday night when we had dinner to mention the fact  
22 that he's a strong supporter and advocate for your confirmation.

23 SENATOR PETRIS: That has no impact on me whatsoever.  
24 I withdraw all the questions I had prepared.

25 MS. FALLGATTER: Thank you, Senator.

26 CHAIRMAN LOCKYER: What's your view about what was the  
27 hardest decision you were forced to confront while you've been  
28 on the board?

1 MS. FALLGATTER: I would agree with Denny. When we  
2 were going through that period on the board where the leadership  
3 wasn't the best that it could be, it was difficult to be able to  
4 stand up and say we need to make a change.

5 And I would say that what was very interesting about  
6 our board, too, is even though as turmoil as we were in at that  
7 point in time, we were able to also go out and risk a little bit  
8 with hiring Barry Munitz because it wasn't the normal hire you  
9 would do, since he was coming out of, at that time, the private  
10 sector. I think that we can all see what a wise choice that  
11 was.

12 CHAIRMAN LOCKYER: Senator.

13 SENATOR AYALA: This morning when we visited, I asked  
14 you if you had a position on affirmative action. You responded  
15 that it hadn't surfaced yet at your board; therefore, you didn't  
16 have one.

17 But it says on June 1st of '95, the Governor signed an  
18 executive order that required all agencies to comply. And  
19 apparently the CSU has not decided to do that at this point,  
20 although the Governor would like you to do it.

21 What is your position on affirmative  
22 action?

23 MS. FALLGATTER: Okay, number one, in our system we  
24 have no race-based programs. So, that compliance doesn't fall  
25 over us at any level.

26 We have great programs in the fact that we all believe  
27 in the equity of opportunity for individuals, and we have our  
28 out-reach programs, and we do everything we can to ensure that



1 we have good pools in our universities.

2 And then also, you know, we take the top third of the  
3 high school graduates out of the State of California, and we're  
4 just more than actively out there pursuing to make sure that we  
5 can get every student that wants an education in California into  
6 our system.

7 SENATOR AYALA: It hasn't surfaced at your board level,  
8 but I think it will. Your position is that you are sensitive to  
9 the problem?

10 MS. FALLGATTER: My position is, I believe totally in  
11 the Master Plan, which is the access, and the affordability, and  
12 the quality of education. And that's a commitment that, since  
13 the Master Plan was established in 1960, that the CSU, even  
14 though we've gone through turmoil as far as economics has gone,  
15 we have never lost that commitment to the access, and the  
16 affordability, and the quality.

17 SENATOR AYALA: Half of the students, as I indicated to  
18 the other member, at CSU need remedial English instruction. My  
19 understanding is that it was discussed in one of your January  
20 meetings to phase that out by the year 2001?

21 MS. FALLGATTER: You know, what we did is, about ten  
22 months ago we had a board meeting in which that policy was  
23 brought to the floor of the board. We have a very interesting  
24 board in that we never act real quickly. We want to have an  
25 information item, spend some time researching it, and bring it  
26 back as an action item. And that's exactly what we did with  
27 remedial education.

28 And we took it even a step further. Ralph Pesqueira,

1 whose committee went throughout the State of California and had  
2 different meetings in all major cities throughout the state, and  
3 we had a meeting with the Legislature up here that you were all  
4 invited, and during that period of give and take and listening,  
5 we came to the conclusion that that year 2001 really wasn't a  
6 feasible thing to try to accomplish, because you're talking  
7 about dealing with K-12 plus higher education, and trying to  
8 formulate this all together.

9 So, what we did is, we revised our policy to where, by  
10 the year 2001, our goal is to eliminate the need by ten  
11 percent. By the year 2004, it's to eliminate the need by fifty  
12 percent, and then, hopefully, by the year 2007, to eliminate the  
13 need for it by ninety percent.

14 And we're working very closely with all the segments in  
15 education so that together, we can make sure that those children  
16 that are coming through the pipeline today, and K-3, especially  
17 when you learn to read and write, that we really put the  
18 emphasis there.

19 SENATOR AYALA: But we're talking about freshman coming  
20 in. How do you intend to remove the need --

21 MS. FALLGATTER: Well --

22 SENATOR AYALA: It's up to the high school.

23 MS. FALLGATTER: This is why the years. This is why  
24 the ten percent, to the fifty percent, to the ninety percent.  
25 It's going to take years. It's going to take a decade probably  
26 in order to ensure that no child is a victim of what's been  
27 occurring at this point. That we really get in and make sure  
28 that we teach these kids correctly in those beginning years,

1 because it's going to influence the rest of their lives.

2 SENATOR AYALA: According our statistics, it shows that  
3 those students that need remedial instruction in English take  
4 longer to graduate. It takes a little bit longer to do that.

5 I still don't understand how you're going to get the  
6 high schools to get these young students to graduate in order to  
7 pass the English entrance exam at Cal, for instance --

8 MS. FALLGATTER: That's an interesting question. And  
9 what we have done, because you're absolutely correct, and how  
10 are you going to take a whole system and change it?

11 We have put together an implementation committee that  
12 is headed by one of our presidents from Stanislaus, Marveline  
13 Hughes. And she has got on her committee different  
14 representatives from all of the different segments in education,  
15 and together they are in the process now of putting together a  
16 plan, a task force plan, that will come back to the board and  
17 say, this is how we feel we can implement this policy in order  
18 to ensure that those children learn.

19 SENATOR AYALA: Is the Superintendent of Instruction  
20 part of your board.

21 MS. FALLGATTER: Yes, she sits on our board, and she's  
22 also totally in agreement with the way that the board came out  
23 with this decision and was at our board meeting last week when  
24 we voted on this policy and voted with us.

25 SENATOR AYALA: Thank you.

26 CHAIRMAN LOCKYER: Other questions, Senator?

27 SENATOR PETRIS: Just one area, and that's on fees,  
28 student fees.



1 I'm a little confused as to the CSU system of tackling  
2 the fee problem. I'm told sometimes only we have the right to  
3 raise the fees, but the board does have some leeway, too. In  
4 '93, they set a goal to make it equal to a third of the cost of  
5 tuition, of instruction, and that seems to be established as a  
6 goal since '93.

7 In the Legislature, we haven't done it. I don't know  
8 how close you are to that goal. I know there's been about  
9 eighty percent increases since '92 or so, which is rather  
10 enormous. Fortunately, they started out with a very low base or  
11 the fees would be even worse than they are now from the  
12 student's standpoint.

13 Can you comment on the fee structure as it is now, and  
14 whether the plan is to continue each year to increase it.

15 I have in mind that the board, in its last increase,  
16 appealed to the Governor to back-fill so that it wouldn't be  
17 necessary. I think that happened once, but it didn't happen  
18 each time.

19 Where is board now on the fee situation as one of the  
20 sources of funding for operating the system?

21 MS. FALLGATTER: Well, to be very honest with you, I'm  
22 a graduate San Diego State. When I went through my education,  
23 my fees were \$150 a year.

24 Today, our student fees are about \$1750 a year.

25 Obviously, in my perception, with the economy the way  
26 it is in the State of California, it seems doubtful to me that  
27 we would be able to roll back fees, but is there a way to try to  
28 cap them? We would hope so.

1 I don't believe that there's a person on our board that  
2 wants to increase the fees. And I can speak from a personal  
3 point of view.

4 I'm a single mother with five boys. They start college  
5 in another two years. I'll have a decade of children in  
6 college. I don't want to raise those fees either.

7 But we've got to find a way to be able to assure that  
8 quality of education for the citizens of the State of  
9 California. When you speak about the one-third, we're not  
10 basically at one-third. That was a situation that came up via  
11 the CPEC and our research on would that be a way to be able to  
12 let the parents know exactly where the dollars are going to be  
13 so that they would always know it's going to be a third of what  
14 it's going to be costing for education, so that they could plan  
15 for their students.

16 The Legislature did not agree with that idea, which I  
17 think it's marvelous that we're being able to keep fees down to  
18 lower level. We have got to find a way to work together to  
19 ensure that there's some way that we can handle that.

20 Right now, with our budget at about around \$2 billion,  
21 we have actively gone out, Senator, in our search for presidents  
22 to make sure that one of those qualities they have is the  
23 ability to fundraise, to walk in and close an individual to give  
24 money back to our university system.

25 And we've got a committee called Institutional  
26 Advancement which is just full-bore out there in the trenches,  
27 trying to make sure that we raise money in order to be able to  
28 accommodate the quality that we're used to.

1           SENATOR PETRIS: How is it doing?

2           MS. FALLGATTER: It's doing marvelously well.

3           SENATOR PETRIS: How well?

4           MS. FALLGATTER: About a half a billion dollars this  
5 last year, and that's in grants and private.

6           And then to take -- our presidents are absolutely  
7 marvelous. We have 22 campuses. And the personal relationships  
8 that our presidents build with the people and the individuals in  
9 their communities, for them to then be turning around and giving  
10 them a million dollars, five million dollars to the university,  
11 it's marvelous because we've not had to compete like that as the  
12 private universities have, so we're kind of new on the block,  
13 but we're doing well.

14           SENATOR PETRIS: Well, you have enormous pool, you  
15 know. Far more graduates from the state system than from the UC  
16 system, just more campuses and more people.

17           I'm happy that you're tapping that. Are you looking at  
18 larger amounts each year?

19           MS. FALLGATTER: Yes, we sure are.

20           SENATOR PETRIS: It isn't just first time enthusiasm  
21 that brings in that money.

22           MS. FALLGATTER: No, it's much more than that. And  
23 there's another thing that we're doing along the same lines  
24 that's not so economic but more for the philosophy in education  
25 of the state. We're forming an organization called Ambassadors  
26 for Higher Education. That's to form a grass-roots organization  
27 throughout the state of California that, really, the issue is  
28 that education needs to be a priority.



1           SENATOR PETRIS: Is that message getting  
2 across?

3           MS. FALLGATTER: We're just in the process of forming  
4 it, and I know you're going to be wanting to be a member of it,  
5 Senator. It's a great organization. I'm serious.

6           SENATOR PETRIS: I'd like to apply for one of those  
7 scholarships myself.

8           Thank you.

9           CHAIRMAN LOCKYER: Many of us have thought he should be  
10 an ambassador over the years.

11           This is general information more than a statement of  
12 your beliefs. Has there been any discussion that's reached the  
13 board on, it has three different names, I think, but  
14 privatization, or contracting out, or out sourcing? Has there  
15 been that kind of --

16           MS. FALLGATTER: From my point of view, and I'm not in  
17 administration everyday, but I can give you just the knowledge  
18 that I have.

19           The only contracting out that I believe in my  
20 perception that we have incurred was the gardening at Long Beach  
21 State. And it was handled very well. President Maxim went and  
22 sat down with the unions. They went and sat down and figured  
23 out what were we able to economically do under that  
24 circumstance? What was the contracting out bid? How could we  
25 work through it? Worked through it amazingly well to where we  
26 have no repercussions from it at all.

27           That's the only situation that I'm aware of at this  
28 point.

1 CHAIRMAN LOCKYER: So there isn't a sort of active  
2 policy or whatever currently? It's just at the discussion  
3 stage?

4 MS. FALLGATTER: Yes.

5 CHAIRMAN LOCKYER: Other questions from Members.

6 What's the pleasure?

7 SENATOR BEVERLY: Move we recommend confirmation.

8 CHAIRMAN LOCKYER: Okay, the motion mover has spoken.  
9 Let's call the roll.

10 SECRETARY WEBB: Senator Ayala.

11 SENATOR AYALA: Aye.

12 SECRETARY WEBB: Ayala Aye. Senator Lewis.

13 SENATOR LEWIS: Aye.

14 SECRETARY WEBB: Lewis Aye. Senator Petris.

15 SENATOR PETRIS: Aye.

16 SECRETARY WEBB: Petris Aye. Senator Beverly.

17 SENATOR BEVERLY: Aye.

18 SECRETARY WEBB: Beverly Aye. Senator Lockyer

19 CHAIRMAN LOCKYER: Aye.

20 SECRETARY WEBB: Lockyer Aye. Five to zero.

21 CHAIRMAN LOCKYER: Good luck. Keep up the good work.

22 MS. FALLGATTER: Thank you very much.

23 CHAIRMAN LOCKYER: We left the roll open on the  
24 previous, so if you want to call the absentee on that one.

25 SECRETARY WEBB: Senator Lewis.

26 SENATOR LEWIS: Aye.

27 SECRETARY WEBB: Lewis Aye. That's five to zero for  
28 Mr. Campbell.

1 CHAIRMAN LOCKYER: Mr. McCarthy, Industrial Welfare  
2 Commission. How are you?

3 MR. MCCARTHY: Fine, thanks. Good afternoon.

4 CHAIRMAN LOCKYER: Do you want to start with any  
5 comments, tell us about yourself?

6 MR. MCCARTHY: I made a brief statement. Perhaps I'll  
7 just take a couple minutes to give you some background on the  
8 Commission and what we've been doing.

9 First of all, I was appointed by Governor Wilson a  
10 little over a year ago.

11 Let me talk about the Commission. Among the various  
12 responsibilities the Commission handles, in fact, which it's  
13 required to do, is to investigate and determine where  
14 appropriate various issues affecting the conditions of labor in  
15 the area of wages, health, and welfare.

16 Since my appointment, the board has devoted most of its  
17 time to reviewing the current minimum wage in the state, which  
18 we are obligated to do at least once every two years.

19 The other major responsibility we've undertaken is to  
20 begin, in fact, we've really just begun, to consider the  
21 proposal to change current overtime pay to conform to federal  
22 standards, which, of course, would cause overtime pay to kick in  
23 after forty hours a week rather than after eight hours work in a  
24 single day. And I know the Legislature here has dealt with that  
25 issue separately.

26 As I say, we've just barely begun to look at that. No  
27 decision has been taken on either issue.

28 With regard to the minimum wage, five public hearings



1 have been held by the Commission across the length and breadth  
2 of the state, at which members of the public, as well as  
3 representatives from labor and business have testified on the  
4 issue. Also, numerous studies have been solicited, many  
5 documents and reports obtained, and so on.

6 On the basis of the facts so far gathered and obtained,  
7 the Commission has voted for the appointment of a wage board on  
8 the basis that the minimum wage may be inadequate.

9 With regard to the issue of overtime pay, as I  
10 mentioned, we've just barely begun to look into the issue, and  
11 so far, in fact, have only held one public hearing. Other  
12 public hearings are scheduled in the next several months across  
13 the state.

14 Let me just take a brief moment to talk a little about  
15 my background, and then answer any questions or provide any  
16 information to you that I can.

17 For most of my career, I've been a college teacher.  
18 Almost twelve years ago I moved to California, and during that  
19 time, I served for several years as Governor Deukmejian's  
20 Director of Community Relations, as well as his Director of OPR  
21 for the last several months of his administration.

22 Following that, I was with the U.S. Department of  
23 Education as the Secretary of Education's regional  
24 representative until January, 1993.

25 Since then, I've returned to teaching. Last year, I  
26 was a visiting faculty member at U.C. Irvine, and currently I  
27 teach at California Baptist College in Riverside.

28 CHAIRMAN LOCKYER: What do you teach?

1 MR. McCARTHY: I teach government and political  
2 science. I enjoy it thoroughly.

3 With regard to my background, let me in a general way  
4 say that I honestly feel that I have the advantage of being able  
5 to view, I think, these issues from several vantage points, and  
6 I think with an open and fair mind. My government and academic  
7 experience has helped in obvious ways.

8 On a more personal level, I grew up in a union  
9 household, as they used to describe it. My father was a union  
10 official in a large plant near home for virtually his entire  
11 working life. Being Irish, union concerns and affairs, as well  
12 as local politics, was the evening fare as much as corned beef  
13 and cabbage, which was a lot.

14 CHAIRMAN LOCKYER: But you wound up an R and not a D.  
15 Don't explain it.

16 MR. McCARTHY: I made the transition. Some say wisdom,  
17 some say cholesterol.

18 But as I say, it was the result of my father's union  
19 strength that my family was able to have moderate but a decent  
20 and comfortable life, as well as the fact that I had a job was  
21 able to work my way through college. I received a good  
22 education, for which I'm thankful.

23 So in short, I believe I have the ability and the  
24 sensitivity to deal with the issues that come before the  
25 Commission, with an understanding of the larger issues and  
26 concerns, as well as human impact of Commission decisions on  
27 working men and women through California.

28 I'll see if I can answer any questions or provide any

1 information.

2 CHAIRMAN LOCKYER: I guess one of our sensitivities has  
3 been for the position of public member.

4 MR. McCARTHY: Yes, sir.

5 CHAIRMAN LOCKYER: Being the kind of a key swing vote  
6 between the labor or business representatives, that we get a  
7 sense of neutrality or objectivity with respect to that role.

8 I think the only way maybe to ask it is, my  
9 understanding of the law is that it requires the Commissioners,  
10 all of them, really, to look out for the general welfare of  
11 employees.

12 Does that seem like an appropriate mission and one  
13 that --

14 MR. McCARTHY: I think that's the ultimate mission of  
15 the Commission. I think, obviously, you have to do that from the  
16 point of view of the larger interest of everyone in the state as  
17 well.

18 As I've quickly found out, for any problem or any  
19 issue, there's rarely one solution that keeps everyone happy,  
20 which, I guess, is the first lesson of politics, I guess, for me  
21 in understanding that.

22 So it's really trying to balance all of that that I  
23 find to be, you know, the most challenging, and the most  
24 important part of being a public member.

25 CHAIRMAN LOCKYER: Other questions from Members.

26 I should ask if there's anyone present who wishes to  
27 comment. If not, Senator Ayala.

28 SENATOR AYALA: I have a question.



1           A number of prominent Californians, including Peter  
2 Ueberroth, have asked to raise the minimum wage. '88 was the  
3 last time it was done. I think the cost of living has decreased  
4 the buying power of those folks at that level.

5           Do you have think position as to what we should change  
6 and to what extent?

7           MR. McCARTHY: Well, one reason I voted to call the  
8 wage board, again, on the grounds that there may be a need for  
9 an adjustment.

10          It is exactly what you said, Senator. Clearly, there  
11 has been a decline based on inflation of probably around 20 to  
12 25 percent.

13          SENATOR AYALA: This is the Commission that can do  
14 that?

15          MR. McCARTHY: Yes, that's correct.

16          SENATOR AYALA: Is there a move afoot to increase the  
17 minimum wage?

18          MR. McCARTHY: Well, there is. In fact, I believe the  
19 AFL-CIO is sponsoring a state initiative to do that as well  
20 through the ballot in the next election. They're gathering  
21 signatures to do that.

22          SENATOR AYALA: Is that also true of prevailing  
23 wage?

24          MR. McCARTHY: We have no jurisdiction over prevailing  
25 wage.

26          SENATOR AYALA: Thank you.

27          CHAIRMAN LOCKYER: Yes, Senator Lewis.

28          SENATOR LEWIS: Are you currently a resident in

1 Sacramento?

2 MR. MCCARTHY: My home is in Sacramento, but I'm  
3 working in Riverside, keeping Southwest Air very profitable.

4 SENATOR LEWIS: That was my question.

5 CHAIRMAN LOCKYER: Other questions, Senator Beverly?

6 SENATOR BEVERLY: No questions.

7 CHAIRMAN LOCKYER: How about a motion?

8 SENATOR BEVERLY: I'm prepared to move we recommend  
9 confirmation.

10 CHAIRMAN LOCKYER: That will be the order. Let's call  
11 the roll.

12 SECRETARY WEBB: Senator Ayala.

13 SENATOR AYALA: Aye.

14 SECRETARY WEBB: Ayala Aye. Senator Lewis.

15 SENATOR LEWIS: Aye.

16 SECRETARY WEBB: Lewis Aye. Senator Petris.

17 SENATOR PETRIS: Aye.

18 SECRETARY WEBB: Petris Aye. Senator Beverly.

19 SENATOR BEVERLY: Aye.

20 SECRETARY WEBB: Beverly Aye. Senator Lockyer.

21 CHAIRMAN LOCKYER: Aye.

22 SECRETARY WEBB: Five to zero.

23 CHAIRMAN LOCKYER: Thank you very much.

24 [Thereupon this portion of the --

25 Senate Rules Committee hearing was

26 terminated at approximately 2:50 P.M.]

27 --ooOoo--

28


CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 13<sup>th</sup> day of February, 1996.

  
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MEMBERS PRESENT

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SENATOR ROBERT BEVERLY, Vice Chair

SENATOR RUBEN AYALA

SENATOR JOHN LEWIS

SENATOR NICHOLAS PETRIS

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

K. MARTIN KELLER, Chief  
Bureau of Automotive Repair  
Department of Consumer Affairs





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## P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN LOCKYER: Rules having a full committee present, thank you for your presence, Members.

We will start with Martin Keller, Bureau of Automotive Repair. Howdy.

MR. KELLER: Senator.

CHAIRMAN LOCKYER: Looks like you have maybe some comments to begin with?

MR. KELLER: If it's the pleasure of the committee.

CHAIRMAN LOCKYER: Sure.

MR. KELLER: Why, thank you. I'll try to do this as informally as possible.

Mr. Chairman and Members, thank you for the opportunity to appear before you. Since the beginning of last year, I've had the honor of serving California consumers as the Chief of the Bureau of Automotive Repair in the Department of Consumer Affairs.

The Bureau has two primary missions. First we protect California consumers who need repairs of their vehicles from fraud. Secondly, we oversee the state's smog check program. In the process we license some 43,000 auto repair dealers, some 8300 smog check stations, and 15,000 smog technicians. We also mediate consumer complaints and investigate and seek prosecution of cases of consumer fraud. The Sears case of several years ago was but the highest profile example of our work.

In fiscal 1994-95, we worked on more than 33,000 consumer complaints, facilitated consumer refunds in excess of



1 \$4 million and initiated 600 civil, criminal, and administrative  
2 actions.

3 As a participant in the Department of Consumer Affairs  
4 performance budgeting pilot project, the Bureau has been  
5 developing market condition assessments to help us target our  
6 enforcement efforts on the segments of the auto repair market  
7 where consumers are of greatest risk from fraud. As a result,  
8 we are now investigating and prosecuting cases of shops ripping  
9 off both consumers and their insurance providers in the auto  
10 body and glass repair markets.

11 Similarly in the smog program, we have been engaged in  
12 an aggressive campaign against shops which issue fraudulent smog  
13 certificates. These illegal certificate mills not only undercut  
14 the efforts of legitimate smog stations to test and repair  
15 failing vehicles, they also permit tons of pollutants to  
16 continue to poison the air we and our children breathe.

17 Our overall responsibility for managing the state's  
18 smog check program faces new challenges. As a result of the  
19 1990 amendments to the Federal Clean Air Act and the 1994  
20 legislation authored by Senators Presley and Kopp and  
21 Assemblymember Katz and signed into law by Governor Wilson, the  
22 Bureau has begun implementing a significant enhancement to the  
23 smog check program.

24 My challenge over the past year has been to balance the  
25 different requirements of this implementation. I oversee a  
26 staff of engineers who have been developing such program  
27 features as remote sensing and the new smog check test  
28 protocols.

1           At the same time, I've sought guidance from not only  
2 the test and repair industry, but from leaders of the different  
3 California communities that will be affected by the new law.  
4 Maintaining the balance of competing program elements and  
5 constituencies while getting Smog Check Two up and running has  
6 been my main focus in 1996.

7           This is the third bureau in the Department of Consumer  
8 Affairs I've been privileged to lead. After two years with the  
9 Bureau of Electronic and Appliance Repair, and two years with  
10 the Bureau of Home Furnishings, I've come to recognize that  
11 effective consumer protection requires active participation not  
12 only of the regulated industries, but of consumers and their  
13 representatives. This participation is essential, not just  
14 because government can only be effective when its stakeholders  
15 have mutual ownership of its success, but because markets are  
16 dynamic. Solutions that work today may not be appropriate  
17 tomorrow.

18           It is my responsibility to ensure that all stakeholders  
19 have the opportunity to partner with the Bureau to ensure that  
20 our work is effective, informed, and meets the needs of  
21 consumers and providers.

22           I'll be glad to respond to any questions that you may  
23 have.

24           CHAIRMAN LOCKYER: Okay, thank you. We appreciate your  
25 opening.

26           I guess mostly I would like to hear more detail about  
27 the efforts to enhance enforcement for the ten percent or so of  
28 the automobiles that produce half or more of the emissions.

1           What's the status of that enforcement effort now with  
2 the variety of prongs that you have?

3           MR. KELLER: The new smog check program is in the  
4 process of probably an 18-month roll out. The key component to  
5 which you're referring has to do with government contracted  
6 stations that would test what we call gross polluters, vehicles  
7 which are emitting at very high levels.

8           We're in the process of interviewing potential  
9 contractors and going through the state procurement process that  
10 we expect to finish sometime in April. What we are told by most  
11 of those who are participating in this process is that it's  
12 going to take a number of months to get the regions of  
13 California up and running so that these stations can begin to  
14 test those vehicles as follows: six months after we sign  
15 contracts, the Central Valley region, which would be Fresno,  
16 Kern County and Sacramento Counties; six months after that, San  
17 Diego and Ventura Counties; and then six months after that the  
18 South Coast region of Los Angeles, Orange, and San Bernardino  
19 and Riverside Counties.

20           CHAIRMAN LOCKYER: When would the first contracts get  
21 signed?

22           MR. KELLER: We anticipate doing that sometime around  
23 the end of April.

24           So the rest of the change-over won't occur --

25           CHAIRMAN LOCKYER: That's when the year-and-a-half  
26 starts to roll?

27           MR. KELLER: That's correct.

28           CHAIRMAN LOCKYER: And what obstacles have you



1 discovered in trying to prepare for that program to hit the  
2 ground?

3 MR. KELLER: I think the major obstacle is making sure  
4 that all the stakeholders understand what's at risk here and  
5 what's at stake. Because the state has chosen to keep the  
6 business more or less in the private sector, we've had to work  
7 with the providers, not only of the equipment that will be  
8 manufactured to do the testing, but with the leaders and rank  
9 and file in the test and repair industry, because one of the  
10 major challenges of the new program will be to do a lot more  
11 repair than we currently do in our program.

12 The Legislature has closed a lot of the loopholes that  
13 have prevented repair from occurring in the past. So, the  
14 industry has some new challenges ahead of it in terms of making  
15 sure it provides competent repair.

16 So, I think the second major obstacle that we're  
17 facing, and it's something that we need to deal with this year,  
18 is working with the industry to make sure they can provide that  
19 competent repair service that consumers are going to be looking  
20 for.

21 CHAIRMAN LOCKYER: Is there any reason why the Valley,  
22 San Diego, South Coast, is there some logic to that?

23 MR. KELLER: The key obstacle to the development of  
24 these test centers has to do with the local permitting  
25 requirements, and the acquisition of land to build the  
26 stations. So, South Coast is just the most difficult because it  
27 has the most dense population and has the large variety of local  
28 permitting agencies that the contractors will have to work with

1 in order to build those stations.

2 CHAIRMAN LOCKYER: Do you have any sense yet of how  
3 effective that whole program may be? Are you able to give us  
4 any estimates?

5 MR. KELLER: Well, the pilot studies that we conducted  
6 last year in conjunction with the Air Resources Board, I think,  
7 demonstrated, and that's what we fought the U.S. EPA on, it  
8 demonstrated that a program that focuses on identifying and  
9 fixing the vehicles that we call gross polluters, the dirtiest  
10 vehicles, would indeed yield enormous benefits as far as excess  
11 emissions.

12 I believe that as long as we can get consumer support  
13 for this program, in particular those consumers who own these  
14 vehicles, to get them fixed, that we will be able to see  
15 significant emission reductions in this particular area.

16 So, I believe that we're on the right track.

17 CHAIRMAN LOCKYER: What will happen if, let's say, it's  
18 an old car that's close to a junker, but it's the only  
19 transportation somebody's got.

20 Are they going to be able to avoid compliance, or will  
21 there be some unusual hardship that their life is about to  
22 encounter because of this? What do you expect.

23 MR. KELLER: Several things have occurred since the  
24 original legislation. One was the passage of AB 63 last year,  
25 because the Legislature had originally conceptualized having  
26 some kind of repair subsidy fund that would be used to subsidize  
27 those that may have a problem with some large repair bills that  
28 they never had to face before.

1           Unfortunately, the funding mechanism that was designed  
2 was a voluntary one and hasn't yielded many results, so the  
3 Legislature passed AB 63, which offers consumers a 12-month  
4 extension on the time it would take to find the resources to  
5 take care of that problem. We don't know if that's going to  
6 work, but it is a first attempt.

7           CHAIRMAN LOCKYER: What does it do?

8           MR. KELLER: What it does is, when you bring your  
9 vehicle in, and you may have a large repair bill and you can't  
10 afford to get it fixed, the state would grant you 12 months of  
11 time to find the wherewithal to get it fixed and bring it into  
12 compliance.

13          CHAIRMAN LOCKYER: And if you don't, what happens then?

14          MR. KELLER: Then you won't be able to register your  
15 vehicle without a passing smog certificate.

16          CHAIRMAN LOCKYER: You join the other one million  
17 people that drive without being registered.

18          MR. KELLER: That's potentially going to happen.

19           I think one of the things that's really critical is  
20 that we work with the Legislature on finding ways to solve this  
21 problem. I'm not sure that this is the only way to solve the  
22 problem.

23           We are running a small scale model of this program  
24 right now here in Sacramento County so we can begin to figure  
25 out what are better ways than the ones we envisioned when the  
26 law was originally passed to deal with some of these problems.

27           I might note also in passage that we do have a  
28 scrappage program that we're beginning to take a look at. So,



1 another option would be that the state may be able to purchase  
2 that vehicle from that motorist, and we would crush the vehicle,  
3 get the emissions credits, and the motorist would at least get  
4 some cash to deal with the problem.

5 CHAIRMAN LOCKYER: There are huge numbers now stacking  
6 up in garages and parking lots pursuant to the impound law for  
7 people that are driving under the influence that have prior  
8 convictions and drive with a suspended license or revoked  
9 license. Now we impound.

10 There's a lot of cars that are gathering dust because  
11 they're ones that people don't want to pay the fees to get them  
12 out of impound.

13 I don't know if anyone's trying to take credit for  
14 them, but you might as well get in that line.

15 MR. KELLER: One of the members of our review committee  
16 that's been instrumental in helping us design this program made  
17 a suggestion that we test all those cars. It's an area that  
18 we've been looking into as a possibility to get emissions  
19 credits fairly quickly.

20 CHAIRMAN LOCKYER: Other questions, Members? Senator  
21 Ayala.

22 SENATOR AYALA: Mr. Keller, the industry claims that  
23 they will have a new gasoline on line by, I believe, July 1st.  
24 And that from the very first day, we're going to remove tons of  
25 pollution from the air. Starting with the very first day that  
26 they have to use that gasoline. It'll be a period of time to  
27 remove the old gasoline from the tanks, stations.

28 Are you as enthusiastic as they are about that

1 possibility?

2 MR. KELLER: Well, as I understand it, and I'm not an  
3 expert on the over-all air quality problem, Senator, but as I  
4 understand it, we still have enormous gaps in the emissions  
5 reductions that we have to achieve pursuant to federal law.

6 As I understand the cleaner burning gas programs to  
7 which you refer, this is going to help us, if it works right, to  
8 make a dent in the vehicle emissions, which is one of the areas  
9 that we need to do a better job at.

10 So, we kind of look at it as a companion piece to what  
11 the smog check program's going to do. Its benefits will be  
12 specific but limited, and what we have to do is deal with  
13 vehicles who have a larger problem which has to do with the  
14 operation of their engine, make sure that the engines are  
15 operating properly, so that the cleaner burning gas will also  
16 have the greatest effect.

17 SENATOR AYALA: The new gasoline will do nothing in  
18 terms of your smog check program. You'll just continue as  
19 before.

20 MR. KELLER: That's correct. Again, as I understand  
21 it, the cleaner burning gas is a whole separate approach to  
22 reducing emissions, in addition to the benefit that we can get  
23 from our smog program.

24 SENATOR AYALA: Is it going to change the approach to  
25 the problem you have today?

26 MR. KELLER: At this point, we don't anticipate that.  
27 Again, we must work very closely with Air Resources Board as  
28 that program rolls out in case any unanticipated problems

1 regarding car maintenance or repair arise by virtue of using  
2 that gas.

3 SENATOR AYALA: If it's going to take that much smog  
4 out of the air, if it removes that much smog out of the air,  
5 pollution, it would make your job a little bit easier.

6 MR. KELLER: Well, I wish that were the case, but I  
7 believe that our studies demonstrate that the problem with  
8 maintenance and repair of vehicles is of such -- such acute  
9 degree that we still have to have a very aggressive program for  
10 smog check. The cleaner burning fuels program will help us in  
11 general, but smog check is focused on the dirtiest vehicles.

12 SENATOR AYALA: Thank you.

13 CHAIRMAN LOCKYER: One of the rather obvious reasons  
14 that we wish you success is the growing evidence that the larger  
15 cause of our smog conditions is mobile vehicles rather than  
16 stationary sources. And we've done a lot to try to clean up the  
17 business emissions at stationary sources, and it creates  
18 difficulties to expand business in California and create jobs as  
19 long as we have this problem.

20 In certain regions it's a serious matter, and we have  
21 to be disciplined about cleaning up mobile sources or we're  
22 going to have the business environment suffer.

23 I am pleased by your efforts and wish you success. I  
24 hope you'll keep us periodically updated as to the progress or  
25 difficulties that you encounter.

26 MR. KELLER: Absolutely, Senator. We will actually be  
27 briefing the Transportation Committee tomorrow afternoon at  
28 2:00, if anybody wants to drop by and get into some of these



1 things in detail.

2 CHAIRMAN LOCKYER: Some Members are on that also.

3 MR. KELLER: That's right.

4 CHAIRMAN LOCKYER: Other questions? John.

5 SENATOR LEWIS: Just a quick question on the Central  
6 Valley Project you're getting ready to roll out.

7 How is it that the cars are chosen? Is that via the  
8 remote sensing program?

9 MR. KELLER: We have -- we are required by law to  
10 identify and bring in 15 percent of the vehicle population in  
11 any region. We have three categories.

12 First of all, the two percent random sample that will  
13 be just generated off the DMV data base and that's for control  
14 purposes, so that over time we can measure how well we're  
15 cleaning up the emissions.

16 About six percent will be called in by remote sensing,  
17 which is a way of measuring emissions as vehicles drive by, and  
18 the balance will be called in on cycle. That is, when the DMV  
19 registration is to be renewed every two years, by virtue of what  
20 we call a high emissions profile, which we developed as a way of  
21 predicting the likelihood, based on a number of characteristics  
22 of a particular vehicle, including that vehicle's individual  
23 smog check history as to whether it might be gross polluting  
24 vehicle.

25 In the initial test of that particular device here in  
26 Sacramento, we found it to be approximately 67 percent  
27 effective, which means that two-thirds of the time we are indeed  
28 predicting the dirtiest cars when they come in.

1           SENATOR LEWIS: Has there been a problem on the other  
2 side of the equation, pulling in cars that are not  
3 emitting?

4           MR. KELLER: Generally speaking, if we call a car in on  
5 the high emitter profile, it will fail the test, but whether it  
6 will fail at the gross polluter levels is part of the issue.

7           Again, part of the value of running a small scale model  
8 of this program currently is that it allows us to refine all of  
9 the science and the data, because clearly we only want to call  
10 vehicles which are failing. That would be the purpose of -- the  
11 state becomes the heavy now, so that the mechanic and the  
12 technician in the shop which fails vehicles, the state's going  
13 to take a larger responsibility for that.

14           We intend to continue to refine that. And there are  
15 other concepts floating around that we're considering as a way  
16 of making sure that we get those vehicles in, in a way that is  
17 least disadvantageous to consumers.

18           CHAIRMAN LOCKYER: Unless there are other inquiries,  
19 I'll entertain a motion on the matter.

20           SENATOR BEVERLY: Move we recommend confirmation.

21           CHAIRMAN LOCKYER: Senator Beverly has done such. Call  
22 the roll, if you will.

23           SECRETARY WEBB: Senator Ayala.

24           SENATOR AYALA: Aye.

25           SECRETARY WEBB: Ayala Aye. Senator Lewis.

26           SENATOR LEWIS: Aye.

27           SECRETARY WEBB: Lewis Aye. Senator Petris.

28           SENATOR PETRIS: Aye.

1 SECRETARY WEBB: Petris Aye. Senator Beverly.

2 SENATOR BEVERLY: Aye.

3 SECRETARY WEBB: Beverly Aye. Senator Lockyer.

4 CHAIRMAN LOCKYER: Aye.

5 SECRETARY WEBB: Lockyer Aye. Five to zero.

6 CHAIRMAN LOCKYER: Good luck.

7 MR. KELLER: Thank you. I'll need it.

8 CHAIRMAN LOCKYER: Keep us informed.

9 MR. KELLER: Absolutely.

10 [Thereupon this portion of the  
11 Senate Rules Committee hearing was  
12 terminated at approximately 3:30 P.M.]

13 --ooOoo--  
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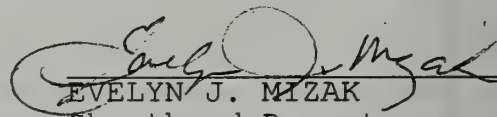
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I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

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APPEARANCES

MEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR ROBERT BEVERLY, Vice Chair

SENATOR RUBEN AYALA

SENATOR JOHN LEWIS

SENATOR NICHOLAS PETRIS

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

LINDA J. CLARKE, Warden  
Correctional Training Facility, Soledad

FRANK SEARCY, President  
Chicano Correctional Workers Association

ROY MABRY, President  
California Association of Black Correctional Workers

LEWIS G. KUYKENDALL, Warden  
Valley State Prison for Women

D. GAIL LEWIS, Warden  
Pleasant Valley State Prison

JIM GOMEZ, Director  
California Department of Corrections





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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN LOCKYER: Perhaps we should begin with appointees, since we've kept people waiting, and then go to reference of bills when we can get back on track here.

So our gubernatorial appointees, first appearing today, Linda Clarke, the Warden at Soledad.

Good afternoon.

MS. CLARKE: Good afternoon.

CHAIRMAN LOCKYER: You can certainly start with any statement that you'd care to make as a way of introducing yourself.

MS. CLARKE: Thank you.

First, good afternoon, Senators and Members of the Committee. Thank you for giving me this opportunity to meet with you.

Fourteen days from now I will have achieved 28 years in the Department of Corrections. I started as a correctional officer and have worked my way through the ranks, in addition to being a correctional officer, sergeant, lieutenant, supervising counselor, correctional administrator, chief deputy warden, and now Warden at the Correctional Training Facility.

Also during this 28 years of career, I've achieved some personal goals of completing some education. I have a Bachelor's degree in management from the University of Redlands, and a Master's degree in public administration from the University of Southern California.

I think I've prepared myself to move into this

1 leadership position, and I'm looking forward to more years at  
2 the Correctional Training Facility.

3 Thank you.

4 CHAIRMAN LOCKYER: Thank you very much.

5 Well, let me first ask if there are any questions right  
6 now.

7 I'll ask if there's any support testimony, if there's  
8 anyone who might wish to make comments at this time.

9 Good afternoon.

10 MR. SEARCY: Good afternoon, Senator and Committee  
11 Members.

12 My name is Frank Searcy. I am President of the Chicano  
13 Correctional Workers Association.

14 I'd like to be here this afternoon to offer our support  
15 for Ms. Clarke as Warden of the Correctional Training Facility.

16 Just as a matter of information and possibly a  
17 coincidence, just recently, last week, I happened to -- on a  
18 special assignment as per the Director of Corrections, was at  
19 that institution. And we were able to speak to a few of the  
20 staff on all watches of the institution and in varying  
21 classifications.

22 And our task to be there was to interview the staff on  
23 the Treatment of People Program. And very fortunately and very  
24 nicely, we heard that Ms. Clarke has made a very positive impact  
25 at that institution. She is listening to her staff, and she is  
26 responding accordingly and appropriately. And we walked away  
27 from there, I think, with a very nice, good feeling that she is  
28 very suited for the job.



1           With that, again, we'd like to offer our support as  
2 Warden of that institution. Thank you.

3           CHAIRMAN LOCKYER:. Thank you.

4           Next comments, please.

5           MR. MABRY: Good afternoon. I'm Roy Mabry, the State  
6 President for the California Association of Black Correctional  
7 Workers.

8           Along with Frank Searcy, I attended that tour also. We  
9 go from institution to institution on special projects and talk  
10 to the employees regarding Treatment of People.

11          Again, my comments are the same as his regarding  
12 support for the Warden at that institution.

13          Also, for the remainder of the wardens that's coming  
14 up, we toured those facilities also, and the support from our  
15 Association is the same, 100 percent.

16          During our tours, we go into the institutions  
17 unannounced, basically. We normally show up at midnight, and we  
18 just walk around unescorted and talk to the staff freely. And  
19 we try to get a good consensus of what goes on with the  
20 experience, what they experience in terms of their treatment.  
21 And we do a thorough report in terms of what we experience back  
22 to the Director. And whatever recommendations we generally make  
23 in reference to the information we get, we've seen some changes  
24 altered in terms of the concerns in the past.

25          In this case, there was no -- nothing to be altered.  
26 The institution was something different, and I enjoyed the  
27 tour.

28          Anyway, 100 percent support.

1 CHAIRMAN LOCKYER: Thank you very much.

2 Is there anyone else that would wish to comment at this  
3 time either for or against?

4 Maybe Committee Members, Senator Ayala.

5 SENATOR AYALA: I'd like to ask the Warden here,  
6 outside of overcrowding, what do you envision as the next  
7 problem facing the Department in the next five years?

8 MS. CLARKE: Aside from overcrowding? Probably our  
9 efforts to try to continue to provide programs for the inmates  
10 that will keep them active, and involved, and their energies  
11 focused on improving themselves so that they can re-enter  
12 society rather than re-entering society with a negative mindset.

13 SENATOR AYALA: That's not a problem, though, is it?

14 MS. CLARKE: The re-entering of society?

15 SENATOR AYALA: No, what you're trying to tell me about  
16 instructions for the inmates, and so forth, to make them better  
17 people.

18 I asked what would be the next problem, other than  
19 overcrowding, and you mentioned that. That's a  
20 challenge?

21 MS. CLARKE: Yes, it's a challenge, sir.

22 SENATOR AYALA: It isn't necessarily a problem. Is  
23 there anything in the way for you not to accomplish that?

24 MS. CLARKE: We -- yes, we do have resources for that  
25 now.

26 SENATOR AYALA: I'm always concerned about illegal  
27 drugs and alcohol in the prisons. Is there a problem in your  
28 institution, any more than all the others, or pretty much the

1 same?

2 MS. CLARKE: I don't believe there's anymore than any  
3 others, sir.

4 SENATOR AYALA: What are we doing to correct that? I  
5 never can understand why or how they get into the institution.

6 MS. CLARKE: Well, unfortunately, sometimes visitors  
7 bring them in. Where there's a will, there's a way.

8 We're trying to meet the challenge of that with being  
9 able to research the background of the individuals who do come  
10 in and to deny access to those who have drug backgrounds.

11 SENATOR AYALA: So, you are attempting to do something  
12 to eliminate that?

13 MS. CLARKE: Absolutely, yes.

14 SENATOR AYALA: Thank you.

15 CHAIRMAN LOCKYER: Other questions.

16 I don't think I have any, so I would entertain a  
17 motion.

18 SENATOR BEVERLY: Move we recommend confirmation.

19 CHAIRMAN LOCKYER: All right, we have a motion to  
20 recommend.

21 Please call the roll.

22 SECRETARY WEBB: Senator Ayala.

23 SENATOR AYALA: Aye.

24 SECRETARY WEBB: Ayala Aye. Senator Lewis.

25 SENATOR LEWIS: Aye.

26 SECRETARY WEBB: Lewis Aye. Senator Petris. Senator  
27 Beverly.

28 SENATOR BEVERLY: Aye.



1 SECRETARY WEBB: Beverly Aye. Senator Lockyer.

2 CHAIRMAN LOCKYER: Aye.

3 SECRETARY WEBB: Lockyer Aye.

4 CHAIRMAN LOCKYER: Let's leave the roll open for  
5 Senator Petris.

6 Thank you. Good luck, Warden.

7 MS. CLARKE: Thank you.

8 CHAIRMAN LOCKYER: We also have -- well, it's Warden  
9 Day, I guess -- Mr. Kuykendall at Valley State.

10 Good afternoon, sir.

11 MR. KUYKENDALL: Good afternoon, Mr. Chairman, Members  
12 of the Committee.

13 I'm here today after having served 28 years with the  
14 Department of Corrections. The last fifteen years, I've spent  
15 in various administrative positions in different facilities,  
16 both male and female facilities in California.

17 The last ten years I've spent in opening and operating  
18 female correctional facilities, specifically the new ones that  
19 have opened in Stockton and Madera.

20 I spent three years as the Associate Warden at  
21 Stockton, and was subsequently promoted to Chief Deputy Warden  
22 at Central California Women's Facility. I helped to open and  
23 operate that facility as the Chief Deputy Warden for five  
24 years.

25 Most recently, in 1994, I was appointed as the new  
26 prison manager at Valley State Prison for Women, where I'm  
27 currently assigned. In April of 1995, I was appointed as the  
28 Acting Warden at that facility. That facility opened in May of

1 1995 with a design capacity of 1980. We currently have an  
2 inmate population of just over 2200.

3 I realize this appointment is a little bit unusual in  
4 that it's the first time that a male has been appointed as the  
5 warden in California over a female correctional facility. But I  
6 would reiterate that I've been in training for ten years, so I  
7 feel that I'm somewhat qualified to continue the job that I'm  
8 in.

9 Thank you.

10 SENATOR BEVERLY: Any questions of the nominee?

11 Anyone here to testify for or against the nomination?

12 MR. SEARCY: Thank you, Senator. I'll be as brief as  
13 possible.

14 Again, the Chicano Correctional Workers Association  
15 completely endorses Mr. Kuykendall for this position. We feel  
16 that his qualifications and his experience, as he stated, ten  
17 years, yes, very well qualifies him for this position also.

18 So again, therefore we recommend his endorsement, his  
19 confirmation, for this position. Thank you.

20 SENATOR BEVERLY: Thank you very much.

21 Anybody else? Any questions by the panel?

22 Is there a motion?

23 SENATOR LEWIS: Move.

24 SENATOR BEVERLY: Senator Lewis moves we recommend  
25 confirmation.

26 Call the roll.

27 SECRETARY WEBB: Senator Ayala.

28 SENATOR AYALA: Aye.

1 SECRETARY WEBB: Ayala Aye. Senator Lewis.

2 SENATOR LEWIS: Aye.

3 SECRETARY WEBB: Lewis Aye. Senator Petris.

4 SENATOR PETRIS: Aye.

5 SECRETARY WEBB: Petris Aye. Senator Beverly.

6 SENATOR BEVERLY: Aye.

7 SECRETARY WEBB: Beverly Aye. Senator Lockyer.

8 CHAIRMAN LOCKYER: Aye.

9 SECRETARY WEBB: Five to zero.

10 SENATOR BEVERLY: Do you want to open the roll on the  
11 first appointee?

12 SENATOR PETRIS: Where is Valley State?

13 MR. KUYKENDALL: It's in Madera County, right near the  
14 town of Chowchilla.

15 SENATOR PETRIS: Thank you.

16 CHAIRMAN LOCKYER: Senator Petris, the first interview  
17 of Warden Clarke was concluded with a four-zero, the roll held  
18 open if you'd like up to open that roll.

19 SENATOR PETRIS: Yes, please. Petris Aye.

20 SECRETARY WEBB: Five to zero.

21 CHAIRMAN LOCKYER: Warden Lewis is our next person.

22 Good afternoon.

23 MS. LEWIS: Hello.

24 CHAIRMAN LOCKYER: Maybe you'll give us a little  
25 picture of your background as well.

26 MS. LEWIS: I'd be happy to, thank you.

27 I, too, started with the Department of Corrections 28  
28 years ago. I started as a correctional officer at the



1 California Rehabilitation Center in Norco, California, and  
2 promoted to sergeant, and lieutenant, and counselor.

3 And I think my most recent experience prior to coming  
4 to Pleasant Valley was as Chief Deputy Warden at the California  
5 Men's Colony in San Luis Obispo, and as Chief Deputy Warden over  
6 out-patient psychiatric programs at the California Medical  
7 Facility at Vacaville.

8 I came to Pleasant Valley, to Coalinga, as the new  
9 prison manager in July of 1994. We opened to intake of inmates  
10 in November of 1994, and we've gone from zero at that time to  
11 4200, and we have we're going to be opening our gymnasiums to  
12 overcrowding in the next few months.

13 I think we've had a very successful activation. I'm  
14 proud of the prison, and I have enjoyed every minute of it.

15 CHAIRMAN LOCKYER: What's been the hardest part of your  
16 job as Warden?

17 MS. LEWIS: Well, I don't -- I don't really think so  
18 much in terms of hard or easy as much as concerns.

19 I think, though, if you talk about the hardest part, it  
20 generally has to do with personnel actions. Any time you're  
21 involved in the hiring or firing of someone and affecting their  
22 life, that, I guess, gets into the hard definition.

23 CHAIRMAN LOCKYER: Maybe I'll be allowed to tell a  
24 story. Can I take the two minutes?.

25 SENATOR PETRIS: Sure, tell us a story.

26 CHAIRMAN LOCKYER: It makes the same point, Warden.

27 I was sitting at a college graduation next to the  
28 President of Bechtel one year and asked him, "What is the

1     hardest part of your job?"

2             He said, "Personnel."

3             I said, "Gee, could you give me an example?"

4             "Well, we've got this chief corporate counsel for  
5     Bechtel, and he's one of these people, lawyers, that say you  
6     can't do this, you can't do that, you can't do that, and it's  
7     very frustrating. We're all kind of wanting to say: what can  
8     we do? You know, we're tired of it."

9             He said, "You know, I was about to fire the guy, but  
10     fortunately Ronald Reagan just made him Secretary of Defense,  
11     Cap Weinberger."

12                     [Laughter]

13             CHAIRMAN LOCKYER: Of course, the interesting thing, if  
14     you now look at the historical accounts of the Iran-Contra  
15     discussion, Cap was the one in the Cabinet saying, "You can't do  
16     that. You can't do that."

17             Did anyone want to ask the Warden some questions?

18             SENATOR AYALA: I'd like to ask the Warden, the  
19     facility's only a year old, or thereabouts?

20             MS. LEWIS: Yes, that's right.

21             We received our first inmate November, '94. Well,  
22     we're a little over.

23             SENATOR AYALA: It's already twice the capacity it was  
24     designed for?

25             MS. LEWIS: Yes, it is. Yes, it is and growing.

26             SENATOR AYALA: Why didn't Mr. Gomez design a larger  
27     facility to start with?

28             CHAIRMAN LOCKYER: Jim, we'll toss that one to

1 you.

2 MR. GOMEZ: Because I couldn't get the bill through the  
3 Senate, Senator.

4 [Laughter]

5 SENATOR AYALA: I'm sorry I asked the question.

6 CHAIRMAN LOCKYER: Now I have to correct the record  
7 because that's not true.

8 SENATOR AYALA: From there, where do we go if it's  
9 designed for 2200 and you've got 4300 already there within the  
10 year? This is not a women's prison; is it?

11 MS. LEWIS: No, this is a Level Three male facility.

12 SENATOR AYALA: So, where will these people be going?  
13 From there to some new facility we're constructing at this  
14 point?

15 MS. LEWIS: Well, we have --

16 SENATOR AYALA: Maybe I ought to ask Mr. Gomez that.

17 MR. GOMEZ: I'll say two things.

18 We opened Salinas Valley in May, which is the second  
19 prison in Soledad, and that's the next major activation.

20 We open Corcoran in about a year and a half. We have  
21 17,000 emergency beds that we're constructing and we're looking  
22 at right now.

23 So, we're okay for '96 and '97, barring any major  
24 catastrophic disturbances. L.A. County pulled out 800 beds  
25 about a week ago and told us they wouldn't rent them to us. They  
26 had a major riot in the L.A. County Jail system.

27 So, we have plans that get us through '96 and get us  
28 through '97 with a couple new institutions. '98 and beyond is



1 where the big problems lie, and it's really with the Senate, and  
2 Assembly, and Governor to make some big policy decisions in the  
3 next six months.

4 SENATOR AYALA: That project was in the making for  
5 what, four years or something like that, before they started  
6 construction, and it was designed for only 2200 inmates, and  
7 now --

8 MR. GOMEZ: When we design, we know we're going to put  
9 two in a cell. We know. And her facility should have 4200  
10 inmates. She's got four gymnasiums.

11 We'll probably take a thousand inmates out of L.A. and  
12 dump them in her gymnasium in the next six -- four to six weeks.

13 So, we put them wherever we can, Senator, when the need  
14 arises.

15 SENATOR AYALA: I toured CIM a couple weeks ago, and  
16 they've got these people on the gym floors, double-decked.

17 MR. GOMEZ: We're going to triple-deck. We have the  
18 triple bunks, and part of these emergency beds are triple bunks.  
19 We have to find a place to put them, unless they're let out to  
20 the public, and we made a commitment --

21 SENATOR AYALA: Capacity-wise, what is the ideal number  
22 -- of course, you have a hundreds -- but I mean, actually you  
23 can really supervise well with? Is it 2200?

24 MR. GOMEZ: We can supervise two people in a cell in 90  
25 percent of the cells, as long as they're not condemned inmates,  
26 psychiatric inmates, security housing. Unless they're really  
27 special, most inmates are able to have two to a cell in a  
28 60-square foot cell or an 80-square foot cell.

1           SENATOR AYALA: If you had your way, what would be the  
2 ideal capacity for these prisons?

3           MR. GOMEZ: One-fifty.

4           I think there's an efficiency of scale that California  
5 has demonstrated that we can run prisons much cheaper and more  
6 staff efficient by having two in a cell. I think we've built  
7 the sewage capacity, we've built the water capacity for 180-190.

8           And as long as there's program available for inmates, I  
9 think you can go 150, 160, 170.

10          The problem is when you don't have something for  
11 inmates to do, and you've got a thousand unoccupied inmates,  
12 then you've got a real problem. So, you need those people to be  
13 busy and have a job, an academic education, vocational  
14 education.

15          You cannot let someone sit around and not have  
16 something to do, because these people will think up bad things  
17 to do if they don't have anything to do.

18          SENATOR AYALA: So, 150 would be the ideal, assuming  
19 that you have a central focal position for administration? Have  
20 all these satellites with 150 people in them?

21          MR. GOMEZ: We'd feel very comfortable at that level.  
22 But I think that's something that two directors or three  
23 directors from now may have an opportunity to experience. I  
24 don't believe this one will.

25          SENATOR AYALA: Thank you very much.

26          CHAIRMAN LOCKYER: Thank you.

27          SENATOR BEVERLY: I have one. I meant to ask this of  
28 Warden Kuykendall.

1           What's the difference between a new prison manager and  
2 a warden?

3           MS. LEWIS: Before the prison is activated, during the  
4 construction phase, they're called new prison managers.

5           SENATOR BEVERLY: I see, thank you.

6           CHAIRMAN LOCKYER: Would you tell us a little bit about  
7 what you did when you were in the Inspector General's Office?  
8 What was your responsibility?

9           MS. LEWIS: Yes. I was responsible for conducting  
10 compliance reviews throughout the Department. We looked --

11          CHAIRMAN LOCKYER: In some area?

12          MS. LEWIS: No, we looked at all areas of operations  
13 within both the prisons and the camp system and the parole  
14 division.

15          CHAIRMAN LOCKYER: And what would noncompliance mean?  
16 What were they not complying with?

17          MS. LEWIS: With policy and procedure.

18          CHAIRMAN LOCKYER: What would be an example? Could you  
19 give me an example?

20          MS. LEWIS: For example, if you're looking at control  
21 of hazardous and toxic kinds of things, if they don't have  
22 running inventories, if they don't have safe storage.

23          CHAIRMAN LOCKYER: Okay, got you.

24           I assume you don't live in Sacramento anymore. It has  
25 you down living in Sacramento.

26          MS. LEWIS: Well, I actually have a home in  
27 Sacramento. I also have a home in Coalinga. I sort of have  
28 kept my home here because it's close to my children and my



1 grandchildren. I even keep my dog here.

2 CHAIRMAN LOCKYER: Other questions from Members?  
3 What's the pleasure?

4 SENATOR BEVERLY: Move we recommend  
5 confirmation.

6 CHAIRMAN LOCKYER: We have a motion. If you'll call  
7 the roll, please.

8 SECRETARY WEBB: Senator Ayala.

9 SENATOR AYALA: Aye.

10 SECRETARY WEBB: Ayala Aye. Senator Lewis.

11 SENATOR LEWIS: Aye.

12 SECRETARY WEBB: Lewis Aye. Senator Petris.

13 SENATOR PETRIS: Aye.

14 SECRETARY WEBB: Petris Aye. Senator Beverly.

15 SENATOR BEVERLY: Aye.

16 SECRETARY WEBB: Beverly Aye. Senator Lockyer.

17 CHAIRMAN LOCKYER: Aye.

18 SECRETARY WEBB: Lockyer Aye. Five to zero.

19 CHAIRMAN LOCKYER: Thank you. Good luck to the three  
20 wardens that were with us. We wish you well. It's a hard job.

21 [Thereupon this portion of the  
22 Senate Rules Committee hearing was  
23 terminated at approximately 2:28 P.M.]

24 --ooOoo--  
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26  
27  
28

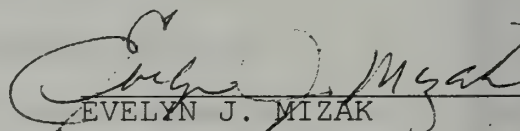
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APPEARANCESMEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR ROBERT BEVERLY, Vice Chair

SENATOR RUBEN AYALA

SENATOR JOHN LEWIS

SENATOR NICHOLAS PETRIS

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

JAMES W. NIELSEN, Member  
Board of Prison Terms

SENATOR QUENTIN KOPP

MANUEL C. GUADERRAMA, Member  
Board of Prison Terms

CONRAD W. HEWITT  
Superintendent of Banks





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## P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN LOCKYER: Our first appointee is  
Mr. Nielsen. Thank you.

MR. NIELSEN: Good day, Mr. Chairman and Members.

CHAIRMAN LOCKYER: Thank you for waiting. We  
appreciate the chance to see you again.

MR. NIELSEN: Indeed, Mr. Chairman. It's a pleasure.

CHAIRMAN LOCKYER: Do you want to begin with any  
opening statement?

MR. NIELSEN: I have none particularly, Mr. Chairman.  
It's just an honor to be before the Rules Committee for the  
purpose of confirmation.

I've enjoyed my tenure in the role as a commissioner on  
the Board, and more recently as Chairman of the Board.

I'll be happy to entertain any questions that Members  
may prefer.

CHAIRMAN LOCKYER: Is the job different when you're  
Chair than being a member?

MR. NIELSEN: Mr. Chairman, as the Chairman of the  
Board, your primary duty is administrative, handicapped to the  
extent of being chair-bound in an office building, doing mostly  
administrative duties, rarely going on and doing hearings.

CHAIRMAN LOCKYER: You did more of that as a  
member.

MR. NIELSEN: As a commissioner, five days a week  
you're somewhere from Pelican Bay on the Oregon border, to  
Robert J. Donovan on the San Diego border with Mexico, doing



1   hearings five days a week.

2           The Chairman's role, it is more administrative. I  
3   don't know that I'd characterize it as having any more  
4   headaches. Vicissitudes of management do visit one who is in  
5   the Chairman's role.

6           CHAIRMAN LOCKYER: As someone who spends a lot of time  
7   on airplanes, I used to be excited when I was kid, but I've  
8   learned that it gets to be pretty old for those that are flying  
9   all over the state all the time.

10          How many, in a typical week or month, how many  
11   different places would you have had to have gone as a  
12   member?

13          MR. NIELSEN: Generally, Mr. Chairman, a panel, and we  
14   have, depending on the numbers of commissioners we have  
15   available to us -- we have one vacancy right now -- but we will  
16   have three to four panels going throughout the State of  
17   California every given week. By law, there can be two  
18   commissioners and one deputy commissioner, or a panel comprised  
19   of three commissioners.

20          We never have less than three panels going at various  
21   institutions. There will be one panel at one institution for  
22   an entire week. On some rare occasions we will split the week  
23   for an adjacent prison, for example, Wasco or Delano or  
24   Corcoran. A panel may do a couple of hearings at one prison and  
25   go to the other for the rest of the week.

26          CHAIRMAN LOCKYER: Maybe we ought to wait for the  
27   commissioner to join us, who's not being chair this year.

28          But as a commissioner, you have an opportunity to spend

1 a lot of quality time in these venues.

2 MR. NIELSEN: I would say that commissioners are well  
3 traveled, the weeks in Calipatria, and Pelican Bay, and Delano,  
4 and Corcoran, and Avenal, and Chowchilla, and soon to be  
5 Susanville, are interesting, Mr. Chairman, as well in some cases  
6 getting there.

7 As you as Pro Tem well know, traveling the state of  
8 California as you must, sometimes it ain't easy getting there  
9 even.

10 CHAIRMAN LOCKYER: Right.

11 Anything different since the last time we've seen you  
12 in terms of the burdens on the office, the budgets, the types of  
13 prisoners you see? Any changes that you might want to reflect  
14 on?

15 MR. NIELSEN: I would only observe, Mr. Chairman, that  
16 the younger inmates, that you well know from your active role in  
17 sentencing legislation, are becoming a bit more violent as they  
18 come into the institution. Their disciplinary records do  
19 reflect that. It is an unfortunate phenomena.

20 We certainly do see an increased pressure on our  
21 hearing work loads in regards to the life inmates in their  
22 suitability hearings, as well as the parole revocation  
23 proceedings. That gives us a constant pressure.

24 We, like you, are considering and anticipating ways  
25 that we'll deal with the three strikes population.

26 As I have talked with your staff, Mr. Chairman, we are  
27 viewing some things that we may be able to do with intermediate  
28 sanctions. And I think one thing very significantly, we're

1 doing some exciting things with the foreign prisoner transfer  
2 program.

3 The Governor delegates to the Chairman his authority to  
4 approve transfers. That has not been anything we've done in any  
5 great volume in years hence, but in the last one year, I've been  
6 able to transfer well more than we did in the previous three.  
7 Now 28 inmates have been approved in California for transfer,  
8 and in fact, 14 have been approved by the United States  
9 Department of Justice also. So, that will help with some of our  
10 bed count.

11 CHAIRMAN LOCKYER: What are the rules on that? Of  
12 course, we'd like to do it with maybe several thousand that  
13 could be returned to country of origin.

14 MR. NIELSEN: They vary with the treaty with the origin  
15 country. There's some 85 treaties and various compacts that we  
16 deal with. Those really are the definers of how many that you  
17 can transfer.

18 CHAIRMAN LOCKYER: Of the 28, how many were from  
19 Mexico?

20 MR. NIELSEN: Of some 20,000 foreign-born criminal  
21 offenders, about 18,500 from Mexico, so they are the country we  
22 try to deal mostly with.

23 And we have been working with the immigration reform  
24 legislation, Mr. Chairman and Members, to secure some amendments  
25 that we feel will give us a greater degree of assurance of  
26 protection that these individuals that we transfer will not come  
27 back, or, in fact, in the host country they'll serve the time  
28 that we would expect that they comparably should as sentenced



1 here. And what that, frankly, is doing is giving us a construct  
2 and an ability to transfer more of these individuals.

3 We're also seeing a greater degree of cooperation with  
4 foreign countries who are interested in having some of their  
5 countrymen sent back home for various reasons, and we've tried  
6 to establish a good working relationship with Mexico.

7 We have commissioned a study with the California State  
8 University System to study the efficacy of siting a prison in  
9 Mexico, not just from the self-interest perspective of  
10 California putting inmates there who are foreign-born in Mexico,  
11 but in a manner that, in the spirit of NAFTA, will help the  
12 states of Mexico and the nation.

13 So far, in the preliminary stages of our study, it  
14 looks very positive.

15 CHAIRMAN LOCKYER: Which university is doing that?

16 MR. NIELSEN: California State University, Sacramento.

17 CHAIRMAN LOCKYER: Of the 28 that you processed so far,  
18 do you think all of those were Mexican citizens?

19 MR. NIELSEN: Not all, Mr. Chairman, but most of them.  
20 I think about three have been of other nationalities. The most  
21 are. And of the 28, 14 have in fact been approved by the United  
22 States Department of Justice, but thus far, only two by Mexico.

23 The process is complicated by it isn't only California.  
24 We're but the first step. The federal government has to approve  
25 of the transfer as well as the receiving country.

26 CHAIRMAN LOCKYER: I am interested in this process. If  
27 you can describe it, or send us, as Senator Kopp would call it,  
28 a "meemo" on the subject.

1 MR. NIELSEN: Mr. Chairman, Mr. Panish of your staff  
2 has been contacted by myself and a member of our staff  
3 responsible and will be given a briefing.

4 CHAIRMAN LOCKYER: We would like to know what the  
5 specific administrative details are so that we can try to assist  
6 with this whole effort, either to change federal law, or provide  
7 the resources, or whatever would be constructive to get this  
8 done with a large, a very large number of those 20,000 that you  
9 referred to.

10 MR. NIELSEN: I think we can very substantially, Mr.  
11 Chairman, with the passage of the immigration legislation, with  
12 the provisions that we would like in it, a few other things, and  
13 cooperative attitudes in foreign countries. I really believe  
14 that this is a potential, not for the many, many thousands, but  
15 quite a few thousand.

16 In other words, we can make a significant dent in the  
17 prison population accommodation, and as we anticipate the three  
18 strikers coming on, and again, those three strikers will  
19 probably be roughly in proportion, what country they come from,  
20 as to what the case is now, and the more we can do, the better.

21 And the Legislature and the Governor, I might note,  
22 have responded. The new notification effort of foreign-born  
23 criminal offenders of their opportunity to apply has greatly  
24 increased the work load that we have to process and consider,  
25 therefore enlarging the pool.

26 And as comfort levels increase, meaning that they'll be  
27 prosecuted if they return, or that the foreign country will keep  
28 them the same time that we would, then we're going to be able to

1 facilitate a lot more transfers and save our budget a few bucks.

2 CHAIRMAN LOCKYER: I'd appreciate it if your staff  
3 would keep us fully informed.

4 Senator Kopp, do you wish to join us and make a  
5 statement?

6 SENATOR KOPP: If I could, Mr. Chairman. Thank you  
7 very much.

8 Your reference to "meemo" reminds me that former  
9 Governor Brown died last week, and I learned that expressive  
10 abbreviation from his former general factotum, Mr. Chet Reed,  
11 who maybe Senator Petris remembers, who always referred to a  
12 document as a "meemo"; send me a meemo on this.

13 Mr. Chairman, I just want to make a comment or two  
14 about our former colleague, not from the standpoint of the  
15 administrative matters about which you've examined him, properly  
16 and understandably, but from a legislative and character  
17 standpoint.

18 First with respect to the character. As we all know,  
19 Mr. Nielsen is a former colleague. And I will affirm to this  
20 Committee that in my frequent visits with him and my  
21 observations of him publicly, he always speaks with dignity and  
22 with grace about the State Senate and the institution which we  
23 love, and which sometimes is lumped in unfortunate fashion with,  
24 perhaps, a disdain for government in general.

25 Secondly, with respect to legislative matters, I've  
26 been involved in a couple of pieces of legislation, one of which  
27 emanated from the Board of Prison Terms itself. And Mr. Nielsen  
28 has provided accurate information, has been conscientious in his



1 responses to questions that were raised, and altogether  
2 respectful and vitally concerned with the legislative process,  
3 and the wisdom and the efficacy of the legislation that was at  
4 stake.

5 And I commend him, Mr. Chairman, to all the Members of  
6 the Committee for confirmation again.

7 CHAIRMAN LOCKYER: Thank you, Senator Kopp.

8 Anyone want to ask Senator Kopp questions? No.

9 Mr. Nielsen, would you care to comment on Senator  
10 Kopp's character?

11 MR. NIELSEN: I could wax no more eloquently than my  
12 former colleague, Senator Kopp.

13 CHAIRMAN LOCKYER: I don't know about factotums and all  
14 that stuff.

15 MR. NIELSEN: Sometimes Q gets a little unwieldy with  
16 words, does he not.

17 Mr. Chairman, if I might, just one point for the  
18 Members of the Committee.

19 I'm often asked what kind of person needs to be  
20 appointed to the Board of Prison Terms, what qualities do they  
21 process.

22 And I have to be candid with you, I always say one  
23 thing: strong character.

24 It is a very tough job, not just -- traveling is the  
25 least of it, Mr. Chairman, but all of your day is spent, five  
26 days a week, 52 weeks of the year, sitting across a table no  
27 closer than I from the worst offenders in society, many of whom,  
28 many of whom, had very terrible things happen to them in their

1 young lives that you grieve for, but who have continued a  
2 pattern of harming many, many other people through the course of  
3 their lives in very heinous ways.

4 It is incredibly depressing to sit in a little block  
5 house, cell-like room, those many hours of the day, hearing  
6 these sorry stories of life.

7 So, for a commissioner to be successful, you need to  
8 have a very strong character and the keen ability not to take it  
9 home or to personalize it.

10 CHAIRMAN LOCKYER: I appreciate your description of the  
11 job. It sounds almost like you're prisoners, in a way, except  
12 you do get to leave at night and go home, or go back to the  
13 motel in Delano, or wherever you are.

14 Have you had a chance to just sort of reflect on all  
15 the stories you hear from prisoners about what, perhaps, could  
16 or should have been done to not have that happen, whatever those  
17 conditions were that produced that eventual pattern of criminal  
18 violence? Or is it just something we can't do anything about?

19 MR. NIELSEN: No, Mr. Chairman. I think over the years  
20 the Legislature has grappled with it, with tougher sentencing  
21 and other societal attempts to do things as well.

22 As I view the populations, and I don't only mean the  
23 life prisoners, the murder first, murder second, kidnap for  
24 purpose, but the determinantly sentenced as well, there are  
25 commonalities most assuredly.

26 In fact, one of our commissioners is doing an informal,  
27 and I would say probably not statistically necessarily valid,  
28 survey. But of all the cases before him, he's jotting down

1 certain commonalities. And what my assumptions were, he's  
2 validated. And that is, a family that did not work, and drugs  
3 and alcohol. And those are absolutely common.

4 And the various attempts that the Members of this  
5 Legislature have made towards family strengthening efforts, and  
6 towards dealing with the substance abuse problems of our society  
7 are very huge pluses in eventually curbing it.

8 And I have to tell you that when I make my ominous and  
9 morbid speeches about my life right now, my public life, the  
10 people say, "Well, Jim, we just can't keep locking them up.  
11 What's the answer?"

12 And I said, "It's one word, the family." If you  
13 strengthen the family unit, and we can argue what that requires  
14 and --

15 CHAIRMAN LOCKYER: How to do it, yes.

16 MR. NIELSEN: If you will strengthen the family unit in  
17 some manner, then I believe that this situation will improve.

18 And my dream is that one day out there hence, in maybe  
19 15-20 years, we'll be closing prisons and trying to define uses  
20 for those prison sites like we are now military bases.

21 CHAIRMAN LOCKYER: You mention chronic unemployment in  
22 the families they come from, and drug and alcohol, substance  
23 abuse problems that seem to be true both of the family and of  
24 the prisoner?

25 MR. NIELSEN: Oh, absolutely. Job skills, never knew  
26 how to find a job, did not have an opportunity to be trained  
27 towards a job, dropped out of school for various reasons, did  
28 not have the family support. You know, obviously that means the



1 mother and father, but it also means the extended family,  
2 grandparents, et cetera.

3 Those are a major societal difficulty right now. I'm  
4 no genius. The Legislature knows that as well as I and have  
5 responded in many ways.

6 I would only encourage the Legislature and all of us to  
7 remain vigilant. If we are so, I believe that there can be some  
8 hope.

9 You see in a few of these individuals hardened, evil  
10 people, particularly up in Pelican Bay, and they're probably  
11 never going to change.

12 But there are some who sincerely do want to, and  
13 society's problem for this population is kind of giving them the  
14 answers as to how, particularly with our youthful offender.

15 CHAIRMAN LOCKYER: Now, you see just the indeterminate  
16 cases?

17 MR. NIELSEN: As far as commissioners and the Board of  
18 Prison Terms, that is the primary duty. But our deputy  
19 commissioners, over which I have administrative authority as  
20 Chairman, do conduct the revocation hearings for parole  
21 violators. The mentally disordered offender program is  
22 conducted by us, and also we now have a major role in the new  
23 Assembly Bill 888 and Senator Mountjoy's legislation related to  
24 sexual predators civil commitment.

25 CHAIRMAN LOCKYER: How is the sexual predator program  
26 getting established? Is it moving along?

27 MR. NIELSEN: It's an interrelationship between  
28 ourselves, the Board of Prison Terms -- the Department of Mental

1 Health is, if you will, the lead agency because, obviously, it's  
2 treatment oriented or treatment based, if you will. If these  
3 individuals are diagnosed as yet dangerous, they must be  
4 treated -- and the Department of Corrections.

5 I have to say it's going rather well so far. We've got  
6 a little over 40 individuals who are today either sitting on a  
7 45-day hold, awaiting some jury or judicial consideration as to  
8 whether they should receive the civil commitment. And but for  
9 this legislation, they would be on the streets, and some of them  
10 would be what their normal business has been, sex predators.  
11 So, it is another very positive tool.

12 And the Legislature, I think, rightly responded to that  
13 area of concern, affording a new tool that the one strike  
14 legislation would not get.

15 CHAIRMAN LOCKYER: There aren't a lot of them yet, I  
16 guess, numerically?

17 MR. NIELSEN: No, there are not a lot.

18 CHAIRMAN LOCKYER: There are serious cases, but  
19 numerically?

20 MR. NIELSEN: There's a very strict criteria,  
21 Mr. Chairman, that one has to meet to qualify for this,  
22 including two priors, and the nature of the relationship with  
23 the individual, a diagnosed mental disorder, are all factors  
24 that must be considered. So, it's a fairly strict criteria,  
25 which means your net is not going to be all encompassing.

26 But we are, I believe, able to catch the worst, and  
27 that's good news for society.

28 CHAIRMAN LOCKYER: I note you mentioned your role in at

1 least being a supervisor for the agents that are involved with  
2 parole revocations.

3 Our materials indicate a rather significant increase in  
4 revocations in recent years. Is that a result of any conscious  
5 policy change in the nature of the acts of the parolees, or  
6 what's going on here?

7 MR. NIELSEN: Mr. Chairman, I do have statistics  
8 available. I didn't bring them in my pocket here today, but  
9 I've reviewed them as recently as a couple hours ago. Over the  
10 years, it rather varies.

11 I would say over the last three years, the revocation  
12 rates have increased a little bit on average, but not  
13 substantially. I think you can easily say that it's been a  
14 fairly consistent policy.

15 CHAIRMAN LOCKYER: I only can tell you, Mr. Chairman,  
16 for the one year. We have '92-3 to '93-4. I guess it takes a  
17 while to get the '95 statistics, for example, until they're  
18 compiled.

19 It went from 34-40,000, so more than a 15 percent  
20 increase just in that one year.

21 MR. NIELSEN: But some are coming back in more than one  
22 time on a revocation, too. There's just not a singular person.

23 Sometimes they are revoked, returned to custody for a  
24 short period of time, and some cases for simply time served, and  
25 then they recidivate. We have them recycling some three or four  
26 times.

27 But our statistics, as a percentage, if you will,  
28 indicates fairly consistent. But I'd say we're up a little bit



1 from, say, three years ago.

2 Is there any particular reason? Not one bloody thing  
3 has changed.

4 The way we convey messages to our deputy commissioners,  
5 there's a constant training on rules and regulations under which  
6 we operate. That means the statutes of the State of California  
7 and the implementing regulations, Title Fifteen. And to what  
8 degree those have been any tougher, and to some degree they  
9 have.

10 There is not yet, but there is attempt in the  
11 Legislature to lengthen the revocation time to more than one  
12 year as the maximum. There has been the legislation to extend  
13 the numbers of years in between suitability considerations for  
14 life inmates in those hearings. And those things have sent a  
15 message, I think, from society to a degree.

16 But I think you will see that there's no great spikes  
17 that would be of any great concern.

18 And I can assure you that nothing happened in the  
19 training or in the caliber of our deputy commissioners nor the  
20 commissioners that is advancing that.

21 CHAIRMAN LOCKYER: Can you recall, even if it's just  
22 as a general notion, not specific numbers, how much, how often  
23 the Board would rely on, rather than a return to custody to a  
24 prison environment, some alternative sentencing, maybe a drug  
25 rehab if that's the nature of their problem, or something of  
26 that sort? Are those alternatives part of your work-up of a  
27 case, or either they come back to the joint or they don't?

28 MR. NIELSEN: No, Mr. Chairman. That is not an

1 automatic. It is a fundamental consideration in the sanction.

2 Once good cause is found in a case, in the  
3 dispositional phase, what are you going to do with this  
4 individual? Is the behavior so egregious that you're going to  
5 return him to custody for a year? Is it that you're simply  
6 going to send them right back out?

7 And in any event, whatever you're going to do, if they  
8 are going to go back and hit the streets, a knowledge of what's  
9 out there is going to be very important.

10 The inmate will comment. Sometimes victims come, and  
11 they'll say what's out there is, we don't want them back. But  
12 very often the parole agent will express some interest. They  
13 participate in the revocation proceedings.

14 And yes, there is a halfway house here.

15 I did mention earlier our conversation with Mr. Panish  
16 about intermediate sanctioning that can be available. What has  
17 frankly stifled me is, though we can put such sanctions into  
18 effect fairly quickly, the inventory of resources in the  
19 community have not been much available to us because I don't  
20 have the staff to employ.

21 But interesting, I met with a gentleman named  
22 Mr. George Ortiz last Monday, who does community resource kind  
23 of work, California Human Development Corporation and La  
24 Cooperativa. And they have some ideas as far as education, job  
25 training, and their network avails me an opportunity that I have  
26 not had heretofor to define some more intermediate sanctions in  
27 areas that may be of interest.

28 So, we are as a board very interested in this area. I

1 am, as a chairman, administratively looking at what  
2 opportunities may exist.

3 CHAIRMAN LOCKYER: Well, as we get increasingly close  
4 to the time when there's just not enough space in the prison  
5 system, I hope whatever alternatives that there might be that  
6 would still allow for appropriate punishment or rehabilitation  
7 will be exhausted, because as we all know, we're getting close  
8 to the point where there just isn't room in the inn.

9 MR. NIELSEN: I'm mindful of Senator Calderon's  
10 comments last week in the hearing that was held here. Three  
11 strikes, for example, as he stated, as I recall, is here to  
12 stay. We've got to define some ways to manage it.

13 Certain offenders must stay in prison, as far as I'm  
14 concerned. They are going to go out and reoffend, and our job  
15 is to be predictive as to which ones those are.

16 But others that can matriculate to free society, we  
17 need to be able to encourage that.

18 CHAIRMAN LOCKYER: I note that you have a special chore  
19 as Chair, which is to manage the work environment and the  
20 quality of the work that is done, and especially most  
21 communication among personnel, sexual harassment, over  
22 familiarization. Some of those issues that come up from time to  
23 time in any bureaucratic or any work environment.

24 Has something happened to try to implement improvements  
25 in that area, or do you have any plans of that sort?

26 MR. NIELSEN: We have been well on the way,  
27 Mr. Chairman, since I became, in fact, Chairman of this Board.

28 Number one, as far as sexual harassment, there is an



1 absolute intolerance of such behavior. We deal with it through  
2 regular training. In fact, this year -- as you know, sexual  
3 harassment training is something very important in government,  
4 period, as well as battered women syndrome. And to our  
5 training, I've added the issue -- the item of domestic  
6 violence.

7 Battered women is required training, but domestic  
8 violence is not. But I've worked with Assemblywoman Kuehl's  
9 office on this issue, and Assemblywoman Speier to incorporate  
10 some domestic violence training.

11 As far as sexual harassment, whenever there have been  
12 those rare occasions, and I can only think of a couple of  
13 instances in our organization of personnel problems, my policy  
14 is -- and our policy is clear of intolerance, but we immediately  
15 and thoroughly investigate, and immediately and thoroughly  
16 impose the appropriate sanction.

17 As to familiarization, it is not only the fact but the  
18 perception of that that's of concern to the Board. Due process  
19 is absolutely vital. We do not owe any inmate a parole date, or  
20 to say that they will not be revoked, but we surely explicitly  
21 owe them the fair shot, the best shot.

22 And familiarity and overfamiliarization of individuals  
23 who practice before the Board is of grave concern, and we have a  
24 high level of intolerance, and in fact do have a policy related  
25 thereto, whereby we discourage and define what that must look  
26 like.

27 Being friendly and courteous is just a common life  
28 circumstance that we encourage, but that individuals that would

1 compromise themselves is not tolerable. And whenever there be  
2 even a perception that there be such a compromise, we ask the  
3 individuals to recuse themselves from that particular  
4 proceeding. And, in fact, if it was egregious and repeated  
5 behavior, they would then receive whatever the appropriate  
6 sanction.

7 CHAIRMAN LOCKYER: Mr. Chairman, we're hearing too many  
8 complaints from people that are unwilling to come forward, so  
9 there seems to be a problem.

10 MR. NIELSEN: Sure.

11 CHAIRMAN LOCKYER: But a lack of evidence, because  
12 there are others involved in the system who are complaining  
13 about members of the Board who are reluctant to come  
14 forward.

15 MR. NIELSEN: Mr. Chairman, I assure you our policy is  
16 intolerance. It is in effect. It is being practiced. It will  
17 be trained, and my commitment to the Members of the Rules  
18 Committee, the Members of the Senate, and to the people of  
19 California, most importantly, is the Board of Prison Terms does  
20 not tolerate such behavior.

21 CHAIRMAN LOCKYER: Other questions? Senator Ayala.

22 SENATOR AYALA: Senator Nielsen, I'd like to revisit  
23 the foreign prisoner transfer program one more time.

24 Is it working or not working? Apparently it's not  
25 working, because we've spent some \$65,000 a year, which is not a  
26 great amount of money, but only three transfers have taken  
27 place.

28 You indicate to us it's the federal government who is

1 not cooperating with state government?

2 MR. NIELSEN: Mr. Chairman, you're reading the Weitzen  
3 analysis of the budget by the Legislative Analyst, for whom I  
4 have enduring respect, but who was wrong.

5 First of all, I did indicate a little earlier that we  
6 -- that I have approved 28, 14 of which have been in fact  
7 approved by the federal U.S. Department of Justice. Only two of  
8 those so far by Mexico.

9 But it is a complicated process, and it isn't just fie  
10 on California. Though I approve them, they still have to go  
11 through the federal process. That takes, at a minimum, 12  
12 months and sometimes three years for the federal government of  
13 the United States to approve the transfer as well, and they  
14 must.

15 Good news is, because we've been working so hard in  
16 such a cooperative spirit with the federal government, they now  
17 have even asked us to come back to Washington, D.C. to talk with  
18 them about expediting their own approval process. We will fully  
19 cooperate in that, and I think that offers a great deal of hope  
20 for the future.

21 So, in the analysis thus far, it indicates, or would  
22 assume, that we in California, if we approve them, they ought to  
23 go. They do not.

24 As I say, I've been able to approve some 28, and we yet  
25 need the approval and concurrence of Mexico and the U.S.  
26 Department of Justice.

27 But what I think what I will be able to evidence in the  
28 budget process is that we've transferred well more than he is



1 suggesting, and that the necessary cooperative spirit in the  
2 United States Congress, giving us the kind of legislative  
3 changes that we need, and maybe the impetus to change some of  
4 the treaties that we need, will be there as well because of our  
5 cooperative spirit with host countries, particularly Mexico.  
6 We're going to see some better things happen there.

7 We have had some positive dialogue with other foreign  
8 nations as well, I might note.

9 SENATOR AYALA: You're saying we don't have the proper  
10 setting in Washington to automatically transfer the people back  
11 to their homes of origin to serve their sentences?

12 MR. NIELSEN: I would say the approval process is  
13 cumbersome.

14 When I first took over here, I thought the main  
15 impediment was simply the consent provision, which means that  
16 the inmate must consent to the transfer. Well, I found out that  
17 that's a factor, but it's not the greatest factor. There are  
18 many, many others.

19 It is complicated, and only California can't solve it,  
20 but we haven't taken a benign role. We've been very aggressive,  
21 did a series of hearings throughout California, did a report.  
22 We are pushing the recommendations of that report. Those that  
23 need to be done legislatively, we are by whatever means of meet  
24 and confer with other foreign countries or the United States  
25 government, we are doing that as well as the United States  
26 Congress.

27 We have worked with Members of the Legislature,  
28 including Senator McCorquodale last year on some legislation of

1 interest to him, and, of course, the Governor, who is very  
2 disposed towards seeing more transfers as as long as they will  
3 protect public safety.

4 So, the cumbersome process, Senator Ayala, has been the  
5 culprit. But I do believe that we can say we are making some  
6 good headway.

7 SENATOR AYALA: How is it that an undocumented alien  
8 can get three strikes? After the first one, don't you deport  
9 him to the country of origin?

10 MR. NIELSEN: Well, let's just say that deportation,  
11 formal deportation particularly, has not been a consistent  
12 process of the federal government.

13 If they are formally deported, you see, and they return  
14 under the '94 crime bill, they get a 20-year federal sentence.  
15 Unfortunately, not many of those 20-year sentences have been  
16 meted out.

17 One of our recommendations is for the United States  
18 Attorneys to vigorously prosecute returning formerly deported  
19 criminal offenders. If they do that, that's going to send a  
20 message to the streets, you might not ought to come back, be it  
21 a one striker, a two striker, coming towards your third strike.  
22 And we are hoping that that, coupled with a few other things,  
23 will stem that -- stem that tide.

24 SENATOR AYALA: We have a number of illegal aliens up  
25 there that have two strikes right now, yet they're still in this  
26 country?

27 MR. NIELSEN: They are still in this country; they  
28 surely are.

1           The problem is finding out and identifying where they  
2 are, and we've been working on tracking systems.

3           SENATOR AYALA: But once they are convicted, we're  
4 talking about a vicious felon here now. This isn't just one of  
5 those low felonies, when they cop for the three strikes.

6           Am I correct?

7           MR. NIELSEN: We're talking about all kinds of  
8 offenders, serious ones and rather minor.

9           SENATOR AYALA: An illegal alien can have two strikes  
10 and he's still in the country?

11          MR. NIELSEN: Absolutely, surely.

12          There are many answers to that. In our little small  
13 shop, the Board of Prison Terms, I think, though, fortuitously,  
14 we've been able to define a number of areas where we could have  
15 an impact. And I think we are, Senator. And I believe over  
16 period of time, we're going to be able to show some.

17          In fact, I think today we can show some very  
18 substantial improvement in the policy of implementing transfers  
19 to return to their home land.

20          In the case of Mexico, for example, it has another  
21 attendant benefit. Being a family-oriented culture, if you get  
22 that inmate closer to their family, that is an asset to that  
23 inmate's reintegration into society --

24          SENATOR AYALA: How many of those illegal aliens are  
25 now serving in state prison, and what does it cost the state  
26 government to maintain those folks?

27          MR. NIELSEN: My math is not very acute, Senator Ayala,  
28 but there are some 20,000 foreign-born criminal offenders; about



1 18,500 hail from Mexico as country of origin. And at around  
2 15-20 grand each, you mathematicians that are more adept than I  
3 can extrapolate.

4 SENATOR AYALA: That's a lot of money that we could put  
5 in our schools; is it not?

6 MR. NIELSEN: Well, it would be an answer to  
7 redirecting some money. I feel that that is a mission.

8 We have some ability and authority as an agency to do  
9 this transferring, and I'm trying -- in fact, we commit an awful  
10 lot of energy. I'd say most of last year, probably an eighth to  
11 a quarter of my own time was devoted to this very single area.

12 I guarantee you, Jim Nielsen doesn't spend that much  
13 time on something that's a Quixotic quest. I think we're going  
14 to make a difference.

15 CHAIRMAN LOCKYER: Other questions, Members?

16 Is there anyone present that had wished to comment  
17 either for or against the confirmation?

18 SENATOR BEVERLY: Move we recommend confirmation.

19 CHAIRMAN LOCKYER: We have motion of recommendation.  
20 If you'll call the roll, please.

21 SECRETARY WEBB: Senator Ayala.

22 SENATOR AYALA: Aye.

23 SECRETARY WEBB: Ayala Aye. Senator Lewis.

24 SENATOR LEWIS: Aye.

25 SECRETARY WEBB: Lewis Aye. Senator Petris.

26 SENATOR PETRIS: Aye.

27 SECRETARY WEBB: Petris Aye. Senator Beverly.

28 SENATOR BEVERLY: Aye.

1 SECRETARY WEBB: Beverly Aye. Senator Lockyer.

2 CHAIRMAN LOCKYER: Aye.

3 SECRETARY WEBB: Lockyer Aye. Five to zero.

4 MR. NIELSEN: Thank you, Mr. Chairman and Members.

5 CHAIRMAN LOCKYER: We hope you'll continue your  
6 conscientious service.

7 MR. NIELSEN: I shall. I guarantee it, Senator.

8 CHAIRMAN LOCKYER: Thank you very much.

9 Okay, we have Mr. Guaderrama.

10 MR. GUADERRAMA: Manuel Guaderrama.

11 CHAIRMAN LOCKYER: Did you want to begin with those  
12 comments?

13 MR. GUADERRAMA: Sure, thank you, Mr. Chairman, Members  
14 of the Committee.

15 I've been on the Board of Prison Terms for the past  
16 four-and-a-half years. Prior to that, I served 30 years with  
17 the San Diego Police Department.

18 Since I've been on the Board, I have worked very  
19 closely with Chairman Nielsen on the foreign prisoner transfer  
20 task force. I was also his Vice Chairman for the past two  
21 years.

22 And since I've been on the Board, we've had a dramatic  
23 increase in the number of hearings that we've conducted. In  
24 1991, I believe, the figure was somewhere around 1250 to --  
25 12,500, I believe it was, to a point now where we're close to  
26 18,000 hearings a day [sic].

27 I've worked since coming on to the Board to streamline  
28 the process. And we have -- we were doing two and three

1 hearings a day back in 1991. Presently, we are doing four  
2 hearings a day. In the very near future, we will be doing five  
3 hearings.

4 So, I've enjoyed doing what I've been doing over the  
5 past four-and-a-half years. I'd like to continue with the new  
6 term.

7 CHAIRMAN LOCKYER: Well, you heard a whole bunch of  
8 questions that I asked Senator Nielsen. I don't know if any of  
9 those provoked a thought, or how you would respond to a similar  
10 inquiry. But if there were things that you were thinking about,  
11 rather than ask ten things, I'll ask you first if there's  
12 anything that seemed to kind of resonate that you'd care to  
13 comment on? If you would, please do.

14 MR. GUADERRAMA: No, sir.

15 I work very closely with him on the foreign prisoner  
16 task force. I'm very familiar with what was going on during  
17 that period of time.

18 And as his Vice Chairman during the period -- for the  
19 last two years, I filled in when he was not available or --  
20 particularly our hearings or our monthly meetings.

21 But no, sir. I don't have anything I'd like to comment  
22 on.

23 CHAIRMAN LOCKYER: Are there questions from Members?

24 We're up against a deadline. Otherwise, I would  
25 recommend a delay based just on the staff background work, but I  
26 think we're stuck.

27 So, Senator Beverly, if you want to enter your motion.

28 SENATOR BEVERLY: Move we recommend confirmation.



1 CHAIRMAN LOCKYER: All right. Any other comments?

2 Call the roll.

3 SECRETARY WEBB: Senator Ayala.

4 SENATOR AYALA: Aye.

5 SECRETARY WEBB: Ayala Aye. Senator Lewis.

6 SENATOR LEWIS: Aye.

7 SECRETARY WEBB: Lewis Aye. Senator Petris.

8 SENATOR PETRIS: Aye.

9 SECRETARY WEBB: Petris Aye. Senator Beverly.

10 SENATOR BEVERLY: Aye.

11 SECRETARY WEBB: Beverly Aye. Senator Lockyer.

12 CHAIRMAN LOCKYER: Lockyer not voting.

13 SECRETARY WEBB: Four to zero.

14 CHAIRMAN LOCKYER: Thank you, sir. Good luck.

15 MR. GUADERRAMA: Thank you, sir.

16 CHAIRMAN LOCKYER: We have Mr. Hewitt, Superintendent  
17 of Banks.

18 Good afternoon, sir.

19 MR. HEWITT: Good afternoon.

20 CHAIRMAN LOCKYER: It looks like you could start with a  
21 brief comment about yourself or the job.

22 MR. HEWITT: Yes, I would like to, Mr. Chairman.

23 CHAIRMAN LOCKYER: Please.

24 MR. HEWITT: I am Conrad Hewitt, State Superintendent  
25 of Banks.

26 Thank you for providing me the opportunity to appear  
27 before you today.

28 I was appointed in May, 1995, and have been enjoying

1 the challenges of the position very much.

2 I want to provide you with a brief overview regarding  
3 my professional background, the State Banking Department, and  
4 some trends I see in the California banking industry.

5 Prior to my appointment, I was a managing partner for  
6 Northern California for the accounting firm of Ernst and Young.  
7 I worked in private accounting for 33 years. During that time,  
8 I audited banks and other financial institutions. I earned a  
9 degree in finance and banking from the University of Illinois in  
10 1958.

11 I've done postgraduate work at the Univeristy of  
12 Southern California, and have attended executive programs at  
13 Stanford University, the Aspen Institute, and most recently, the  
14 Kellogg School of Business at Northwestern University.

15 The State Banking Department supervises and regulates  
16 California's 235 state chartered banks with assets of  
17 approximately \$115 billion. The Department also supervises some  
18 90 percent of the foreign, other nation banks doing business in  
19 California. This represents another \$60 billion in assets.  
20 Other licensees the Department supervises and regulates include  
21 trust companies and issuers of payment instruments.

22 Some trends I see in the California banking industry,  
23 the principle trends I see in the California banking industry's  
24 future are the consolidation of the banks and the application of  
25 technology.

26 Consolidation is a major economic phenomenon across the  
27 country in many industries, as we are all aware, and thus,  
28 banking is no exception.

1 I believe that consolidation in the banking industry  
2 results mainly from economics. Many banks are trying to improve  
3 their competitiveness. I expect to see more consolidation of  
4 banks in California and across the country.

5 At the same time, I believe that California will  
6 continue to have a very strong community banking segment. Many  
7 customers want to be served by their local bank. There are too  
8 many banks in the United States, and probably too many nonbank  
9 financial competitors.

10 The application of technology to banks of various sizes  
11 is another driving force behind the banking industry's future.  
12 Many banks recently returned to profitability as the economy has  
13 improved in California and are looking at ways to apply  
14 technology to improve profitability. Improving profitability is  
15 necessary for many banks in order to be competitive with the  
16 so-called nonbanks, many of which are nonregulated as to the  
17 extent the banks are.

18 Also, I believe that technology provides our Department  
19 an opportunity to make examinations less burdensome to its banks  
20 with better results as to safety and soundness. As a result,  
21 banks will be able to spend more time with their customers and  
22 less time with regulators. Just as important, we will have a  
23 better examination.

24 Now, this concludes my brief statement regarding my  
25 background, the Department, and some major trends.

26 Thank you again for the opportunity for me to appear  
27 before you today, and I will be pleased to answer your  
28 questions.



1 CHAIRMAN LOCKYER: Senator Petris.

2 SENATOR PETRIS: Thank you, Mr. Chairman.

3 Can you elaborate on your statement regarding  
4 consolidation and merger? You expressed apprehension but didn't  
5 specify what the problem was.

6 MR. HEWITT: Yes. There are approximately 10,500 and  
7 some banks in the United States today. That has been on a  
8 decline for last five years, approximately six to eight percent  
9 per year in the U.S. banks. And there's too much capacity in  
10 banking today compared to other nations in the world, for  
11 example, Japan, which has only 1,300 banks. We have over  
12 10,000.

13 The allocation of capital is very important to banks  
14 and necessary, so there will be some consolidation because of  
15 costs of technology and so forth.

16 SENATOR PETRIS: How many banks are there in California  
17 under your jurisdiction?

18 MR. HEWITT: There are 235 domestic banks and 116  
19 foreign banks, and there are approximately 117 national  
20 chartered banks.

21 SENATOR PETRIS: Foreign banks seem to be multiplying  
22 over the years, increasing. At least I have the impression  
23 they're increasing enormously, particularly from Japan.

24 MR. HEWITT: Not necessarily true. In the last three  
25 year in California, we have not chartered any.

26 We chartered about 90 percent of the banks in the last  
27 maybe 10 or 15 years, and we have not seen that trend here in  
28 California, foreign banks wanting to be chartered in California,

1 as opposed, maybe to say, New York.

2 SENATOR PETRIS: Do we have reciprocity? I guess  
3 that's a national jurisdiction, but we allow foreign-owned banks  
4 to come into California. A lot of them are government-owned, as  
5 a matter of fact.

6 Do we have the same rights extended to our banks to go  
7 into their countries?

8 MR. HEWITT: Yes, we do.

9 SENATOR PETRIS: Is it a pretty even reciprocal?

10 MR. HEWITT: As far as I can ascertain, yes.

11 SENATOR PETRIS: You haven't had any complaints from  
12 our banks that they're not permitted to go into a certain  
13 country or a certain part of a country?

14 MR. HEWITT: No, I have not, Senator.

15 SENATOR PETRIS: In the consolidations that have taken  
16 place, one of the comments that I've heard and read is reduction  
17 in the number of local branches and convenient locations to  
18 serve the consumers. Have you received complaints of that  
19 kind?

20 MR. HEWITT: We have received one or two complaints  
21 along that line.

22 There will be some consolidation of branches because  
23 they're right across the street from one another.

24 Although, many of the larger banks in California are  
25 going into the supermarkets today in lieu of those types of  
26 branches where it's more convenient. The supermarket is open 24  
27 hours a day. Some banks have a person there from 8:00 o'clock  
28 in the morning to 10:00 o'clock at night to serve the customer.

1 They can do everything there they can in a branch. It's  
2 probably safer and more convenient to the customer.

3 SENATOR PETRIS: You see that as a positive  
4 development?

5 MR. HEWITT: Very definitely.

6 SENATOR PETRIS: Does that add to your worries as an  
7 administrator of the system?

8 MR. HEWITT: Not at all, does not.

9 CHAIRMAN LOCKYER: While the Senator collects his  
10 thoughts, maybe I could ask you this.

11 In your almost year on the job, does any decision  
12 you've had to make stand out as the toughest one you did?

13 MR. HEWITT: Yes. They're all difficult in one form or  
14 another, but I would say that probably the most difficult is, it  
15 went to the timing to close a bank.

16 CHAIRMAN LOCKYER: How many did you have to do?

17 MR. HEWITT: I've done one. We've had three closures  
18 this past year, one when I came aboard.

19 There have been only six banks closed in the whole  
20 United States, three of them in California. And when to close  
21 that bank is a tough decision.

22 CHAIRMAN LOCKYER: What was the one during your --

23 MR. HEWITT: The Pacific Heritage Bank in Los Angeles.

24 SENATOR LEWIS: I wanted to concur with your analysis  
25 of the benefits of allowing the branching out at supermarkets.

26 My wife banks at our local supermarket, and it's  
27 unbelievably convenient.

28 I just wanted to ask you about the concentration of



1 market share in California now. Can you give us an idea,  
2 perhaps, of the number, or what percentage of depositors, or  
3 what are the largest two, or three, or five banks?

4 MR. HEWITT: I'm a little bit familiar with the Los  
5 Angeles-Southern California area because of the recent Wells  
6 Fargo-First Bank system, First Interstate acquisition, merger.

7 The three large banks in the Los Angeles area only had  
8 about 30 percent of the total deposits in that area, meaning  
9 that other banks had 70 percent.

10 So, we don't see the concentration of deposits in any  
11 particular community by any of the -- a bank as such. Banking  
12 is very competitive in this state.

13 SENATOR LEWIS: With the biggest mergers that have  
14 taken place lately, that didn't affect those numbers in a  
15 negative fashion as far as you're concerned?

16 MR. HEWITT: No, not to any significant degree.

17 SENATOR LEWIS: Is there a threshold? Is there some  
18 kind of a magic number where you --

19 MR. HEWITT: Yes. In the interstate banking bill, we  
20 have a 50 percent threshold of concentration of deposits in the  
21 state, and there's no one --

22 SENATOR LEWIS: How many different institutions?

23 MR. HEWITT: There's no one close to that today.

24 SENATOR LEWIS: A 50 percent threshold --

25 MR. HEWITT: For a consolidation of deposits in this  
26 state by a single bank.

27 SENATOR LEWIS: Oh, single bank. Thank you.

28 CHAIRMAN LOCKYER: Other questions?

1           Okay, Senator Beverly.

2           SENATOR BEVERLY: Nobody wishes to speak?

3           CHAIRMAN LOCKYER: Anybody present that wishes to  
4 comment?

5           SENATOR BEVERLY: Move we recommend confirmation.

6           CHAIRMAN LOCKYER: Okay, call the roll, if you will.

7           SECRETARY WEBB: Senator Ayala.

8           SENATOR AYALA: Aye.

9           SECRETARY WEBB: Ayala Aye. Senator Lewis.

10          SENATOR LEWIS: Aye.

11          SECRETARY WEBB: Lewis Aye. Senator Petris.

12          SENATOR PETRIS: Aye.

13          SECRETARY WEBB: Petris Aye. Senator Beverly.

14          SENATOR BEVERLY: Aye.

15          SECRETARY WEBB: Beverly Aye. Senator Lockyer.

16          CHAIRMAN LOCKYER: Aye.

17          SECRETARY WEBB: Lockyer Aye. Five to zero.

18          CHAIRMAN LOCKYER: Superintendent, I think your  
19 qualifications and thoughtfulness about the job are quite  
20 evident. Thank you for your competence, and continued good luck  
21 and good work.

22          MR. HEWITT: Thank you, Mr. Chairman and Members of the  
23 Committee.

24                       [Thereupon this portion of the  
25 Senate Rules Committee hearing was  
26 terminated at approximately 2:47 P.M.]

27                       --ooOoo--


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I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 28<sup>th</sup> day of February, 1996.

  
EVELYN J. MIZAK  
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APPEARANCESMEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR ROBERT BEVERLY, Vice Chair

SENATOR RUBEN AYALA

SENATOR JOHN LEWIS

SENATOR NICHOLAS PETRIS

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

STEVEN CAMBRA, JR., Warden  
Pelican Bay State Prison  
Department of Corrections

JAMES GOMEZ, Director  
California Department of Corrections

ASSEMBLYMAN DAN HAUSER

RONALD L. ALVARADO, Member  
State Personnel Board



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## P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN LOCKYER: Let's go on to gubernatorial appointees next, Mr. Alvarado. We could do it the other way around to accommodate your schedule; why not? Let's start with Mr. Cambra.

Good afternoon, sir.

MR. CAMBRA: Good afternoon, Senator. Thank you.

CHAIRMAN LOCKYER: Come on up, Assemblyman. Maybe you could open, if you'd care to, Mr. Hauser.

ASSEMBLYMAN HAUSER: Thank you, Mr. President and Members of Rules Committee. I'm here today --

CHAIRMAN LOCKYER: I'm sorry. I'm just told you're opposition. I'm got to make you wait until we get to opposition testimony. I beg your pardon. I didn't realize that that was your thinking. Would you mind retiring to the first row for a few minutes while we bring the supporters forward.

Mr. Cambra, we will begin. Any general statement that you might wish to make, if you would care to just tell us about yourself. Do you have a prepared statement or general comments you'd like to start with?

MR. CAMBRA: Yes, Senator, thank you.

I've been employed with the Department of Corrections a little over 25 years. I started as a correctional officer. I've been a correctional officer, correctional sergeant, lieutenant, correctional counselor. I was in the CPS program. I've been a correctional captain, associate warden, chief deputy warden at San Quentin Prison, an assistant deputy director up in

1 headquarters, regional administrator, and in my present position  
2 at Pelican Bay as the Warden there.

3 CHAIRMAN LOCKYER: Well, you started this job when?

4 MR. CAMBRA: March 21st, sir, of 1995.

5 CHAIRMAN LOCKYER: So, it had been open before you.  
6 How long had it been there?

7 MR. CAMBRA: Chuck Marshall retired around November, I  
8 believe, of '94.

9 CHAIRMAN LOCKYER: There's probably a lot of questions  
10 one might want to ask about. I guess we might just start with  
11 your problems with federal court. Tell us about the  
12 controversies associated with the SHU and other things,  
13 psychiatric treatment, whatever, and what you're doing to  
14 resolve those problems.

15 MR. CAMBRA: Well, in the Madrid decision in January of  
16 '95, Judge Henderson made a ruling that there was excessive  
17 force being used at Pelican Bay State Prison, and that our  
18 delivery of medical and mental health services was inadequate,  
19 mental health in particular, in the Security Housing Unit.

20 Since my arrival at the prison, we've developed a  
21 comprehensive plan on the use of force, and implemented that  
22 plan, trained the staff on that plan. And basically, we've  
23 divided force into two elements, emergency and calculated, in  
24 every case possible.

25 We set up a calculated use of force situation in which  
26 we have a manager present, supervisors present whenever the  
27 force is used. We video the force used for review. We review  
28 all uses of force. I review it on weekly basis. We have an

1 analysis done on the use of force and the need for the force,  
2 the level of force. And I think we've really made great strides  
3 in the area of use of force in that prison.

4 With the mission, force -- the use of force is  
5 inevitable, very frankly. Pelican Bay serves the Department  
6 well, I believe. In my career, I've seen the Department have  
7 different policies in the area of locking up predatory inmates,  
8 and in years past, our violence rate in our prison system, with  
9 a much lower count, was very excessive. We had a high rate of  
10 homicides, a high rate of serious stabbings in CDC.

11 Since the Department developed their procedure to lock  
12 up predatory inmates like we do now in Security Housing Units  
13 like Pelican Bay, we've drastically dropped those rates of  
14 violence inside our prison society as a whole.

15 So, Pelican Bay serves a mission, but it serves a very  
16 difficult mission. The staff have a difficult job.

17 It's my belief that if you get out in front of the  
18 staff and you tell them what you want, they'll give it to you.  
19 You make it clear what your expectations are, and that's what  
20 I've found at Pelican Bay in the last 11 months.

21 We got in front of the staff. We tried to make the  
22 policies clear and direct. We have management involvement in  
23 the implementation of force, and the staff is primarily giving  
24 us what we've asked for there. I think on the force area, we've  
25 got a good handle on it.

26 On medical and mental health, very frankly, it's a  
27 bigger challenge. It's a lot more resource driven. The  
28 exclusion order that came out that excluded mentally ill inmates



1 from SHU set up a situation where we moved the mentally ill  
2 inmates into a Psych Services Unit.

3 The Director put forth budget concept proposals to the  
4 Governor. We've got about an additional 130 staff working at  
5 the prison now, with actually less inmates because the Psych  
6 Services Unit occupied what previously was Level IV GP at 190  
7 percent. And with this type of inmate, we have them single  
8 celled at 100 percent.

9 But it's very resource intensive --

10 CHAIRMAN LOCKYER: The 170 are medical staff or  
11 total?

12 MR. CAMBRA: The 130 was total. There was -- in the  
13 Psych Services Unit itself, it was split about custody about  
14 50-50: about 50 percent clinical, 50 percent custody. And the  
15 reason for that basically is that with this group of inmates,  
16 the reason they were in the Security Housing Unit is, they're  
17 very violent. They're very staff assaultive, very inmate  
18 assaultive.

19 And so, the behavior they display, even though they're  
20 mentally ill, is extremely challenging. And you need the  
21 custody staff there to be able to bring the inmates out of their  
22 cells safely and take them into the treatment areas so the  
23 clinicians can treat these people for their mental illness and  
24 try, through behavior modification and the program established,  
25 to get a handle on that behavior, if possible, for medication,  
26 monitoring, and treatment programs.

27 And so, we've opened up the PSU Unit, provided 128  
28 cells there for those people, and moved those people -- moved

1 those people out of the SHU design, which Judge Henderson felt  
2 that design tended to deteriorate their mental health.

3 In the medical arenas, we're looking at -- basically  
4 the big challenges there is good quality assurance programs and  
5 medical records programs, with a computerized system to share  
6 information on, you know, elements where we bring the inmates in  
7 in sick-call situations, follow through, tracking for lab tests,  
8 and what have you, and good quality assurance is the challenges  
9 we face in the medical areas.

10 Dr. Steinberg's the new CMO up there. I think she's  
11 making great strides in that area, but we have a ways to go. I  
12 see it as a, you know, as a six months to a year project to  
13 really bring about the kind of delivery systems we need in the  
14 medical area and in the mental health arena.

15 CHAIRMAN LOCKYER: Warden, let me make sure I  
16 understood your question on the court order with respect to  
17 transferring some number of inmates, a hundred or something,  
18 from the SHU to the Psychiatric Services Unit.

19 MR. CAMBRA: Yes, sir.

20 CHAIRMAN LOCKYER: What's the status of that particular  
21 change?

22 MR. CAMBRA: We had to move all those inmates out by  
23 December 31st, Senator, and that was accomplished.

24 CHAIRMAN LOCKYER: Okay, that occurred?

25 MR. CAMBRA: Yes, sir.

26 CHAIRMAN LOCKYER: How many different prisons have you  
27 worked in the state?

28 MR. CAMBRA: I've worked the California Men's Colony,

1 San Quentin as correctional officer, and then I was an associate  
2 warden and a chief deputy. California Medical Facility as an  
3 interim warden for three months. When we took charge of the  
4 prison, it split the two facilities and turned it over to two  
5 wardens. Sierra Conservation Center, Pelican Bay State Prison,  
6 and Duel Vocational Institution.

7 CHAIRMAN LOCKYER: Five of them.

8 MR. CAMBRA: Yes, sir.

9 CHAIRMAN LOCKYER: Are they different in significant  
10 ways, as someone who works in those environments, separate from  
11 the fact that you have different job responsibilities in each.

12 How would you teach us how the culture or environment  
13 is different in each of these settings?

14 MR. CAMBRA: CMC was -- mainly handled medical care.  
15 It had an acute care hospital there and also mentally ill  
16 inmates. And we had two sections of that prison when I was  
17 there that was really devoted to providing housing for mentally  
18 ill inmates at CMC.

19 I was there a short time. They used to have a facility  
20 at the west that basically had what -- the nickname was the Old  
21 Man's Home. It was really for elderly inmates, and they were  
22 housed in a very minimum setting.

23 That facility closed down early on in my career, and so  
24 basically I was bumped out of a job there, and the Department  
25 transferred me to San Quentin in 1970.

26 San Quentin at that time was very a violent place. The  
27 first six months I worked there, there was several staff  
28 murdered and assaulted, and many more inmates murdered and



1 assaulted than the number of staff that were murdered and  
2 assaulted.

3 At that time, predatory inmates were on the line. The  
4 prison gangs were on the line. And that was the policy at the  
5 time, and that was the outcome, was wholesale violence.

6 CHAIRMAN LOCKYER: Has that policy changed?

7 MR. CAMBRA: Yes.

8 CHAIRMAN LOCKYER: In some system-wide way?

9 MR. CAMBRA: Right.

10 CHAIRMAN LOCKYER: When did that take place?

11 MR. CAMBRA: I can't recall the actual year, but I feel  
12 around the late '70s, the Department finally realized that we  
13 had to isolate predatory gang members in Security Housing Unit  
14 settings, lock-up settings, in order to curtail the violence in  
15 the prison society, the general population society.

16 CHAIRMAN LOCKYER: Did that seem to be a more  
17 successful approach?

18 MR. CAMBRA: It's very successful. Our violence rates,  
19 homicide rates and serious stabbings in the Department, with  
20 136,000 inmates today, I would guess is probably one-tenth of  
21 what was with 20,000 inmates at that time, Senator.

22 CHAIRMAN LOCKYER: After that change had occurred, so  
23 you have this new policy of segregating the predators or gang  
24 activists, once that was established, are there significant  
25 distinctions in your mind between the work environment under  
26 that new policy between the different institutions?

27 MR. CAMBRA: The environment in some institutions was  
28 still difficult because we managed that population for awhile in

1 three -- three-floor cell blocks, and in five-tier cell blocks.  
2 And it was very problematic in those units. The violence rates  
3 in those units were phenomenal.

4 San Quentin in 1984, I went to San Quentin as a  
5 correctional administrator and took charge of two of the lock-up  
6 units there. And it basically had these inmates housed in  
7 five-tier cell blocks. They were exercising on yards that had  
8 up to a hundred inmates on the yard. The violence rate there  
9 was very pronounced in those units. The violence rate in the  
10 general population throughout the state, however, had  
11 drastically reduced.

12 So, they were serving the mission, but the physical  
13 plant didn't serve the mission basically. It was a poor  
14 physical plant for the type of inmates it served.

15 CHAIRMAN LOCKYER: How does the five-tiers -- I guess I  
16 could understand more readily a large number being in the yard  
17 at the same time, the crowd just facilitating bumping into each  
18 other and problems.

19 How does the tier affect violence?

20 MR. CAMBRA: You had open cell fronts, so basically the  
21 inmates could, you know, stab each other through the cell  
22 fronts.

23 The inmates were escorted in front of the cells. It's  
24 a very narrow tier, so the inmates were escorted in front of the  
25 cells for showers, and for exercising, or for anything,  
26 committee, or what have you. And they basically could prey on  
27 each other.

28 The violence rate, because you have a large cell block

1 with over 200 inmates, and they're yelling threats back and  
2 forth, violence was -- the noise level was phenomenal. They can  
3 reach across and bomb each other; they can gas each other with  
4 bodily fluids or whatever. It just -- it didn't provide the  
5 type of design to control the behavior that those men display.  
6 And it was very difficult to manage them in that setting.

7 CHAIRMAN LOCKYER: And would fewer tiers make  
8 difference? You can still stab somebody when they walk by,  
9 couldn't you?

10 MR. CAMBRA: Right, unless they can get out of the way  
11 from the cell front, or if the cell front is a solid door or  
12 perferrated door like we have at Pelican Bay.

13 CHAIRMAN LOCKYER: So, a different design.

14 MR. CAMBRA: Yes, we have a different design at Pelican  
15 Bay. It's very quiet, very clean. It controls the behavior  
16 that those men have displayed over the years.

17 And very frankly, I saw those large lock-up units as  
18 pressure cooker-type environment, is the best I can describe it.

19 And in Pelican Bay, the pressure's off. I mean,  
20 they're not going to the yard together, so they don't have the  
21 peer pressure to continue on with their violence, even though  
22 some of the inmates still, you know, make knives in Pelican Bay,  
23 but they have a lot less metal in the cells. So, the design has  
24 drastically impacted the control of that behavior.

25 CHAIRMAN LOCKYER: Before going to Pelican, your  
26 assignment prior -- I'm trying to get these chronologically in  
27 order -- were you at --  
28



1 MR. CAMBRA: Yes, sir. I was Northern Regional  
2 Administrator in headquarters.

3 CHAIRMAN LOCKYER: And what does that mean?

4 MR. CAMBRA: I supervised the eleven prisons in  
5 Northern California at the time, Pelican Bay being one of those.

6 CHAIRMAN LOCKYER: Prior to that?

7 MR. CAMBRA: I was the Central Regional Administrator.

8 CHAIRMAN LOCKYER: Central?

9 MR. CAMBRA: Yes, sir, and basically the same job, only  
10 managing the prisons in Central California.

11 CHAIRMAN LOCKYER: Got you. And before that?

12 MR. CAMBRA: Prior to that, I was for three months  
13 interim Warden at CMF. And then prior to that was Assistant  
14 Deputy Director. And basically in that assignment, it was  
15 similar to Regional Administrator, only at that time the  
16 division wasn't split on regional lines.

17 The prisons were assigned to two of us Assistant  
18 Deputies under Dave Tristan, who's the Deputy Director of the  
19 Institutions Division. And they're really assigned by missions  
20 as opposed to geographical locations.

21 CHAIRMAN LOCKYER: Then prior?

22 MR. CAMBRA: Prior to that was Chief Deputy Warden at  
23 San Quentin.

24 CHAIRMAN LOCKYER: I mean, they were assigned by  
25 mission rather than geography before?

26 MR. CAMBRA: Yes, sir.

27 CHAIRMAN LOCKYER: Now it's done geographically.

28 MR. CAMBRA: Yes, sir.

1 CHAIRMAN LOCKYER: How about mission?

2 MR. CAMBRA: That's geography.

3 CHAIRMAN LOCKYER: So, you might have more than one, an  
4 assistant might have, or a deputy. Which is right, you tell me.  
5 I can't keep them straight.

6 You know what they say: there's just too many people  
7 in headquarters. There's no money left for the sites because of  
8 all those people downtown.

9 So, if you're Northern Region, you'd have all missions  
10 under you? They wouldn't be broken up among different deputies  
11 or assistants?

12 MR. CAMBRA: That's correct. We did away with the  
13 Assistant Deputy Directors, and we replaced them with Regional  
14 Administrators, and we just split the state into three regions.

15 CHAIRMAN LOCKYER: The idea being that if you had  
16 co-equals doing different missions, as an assistant they would  
17 kind of bump into each other? It's better to have one person  
18 responsible who reports up?

19 Maybe Mr. Gomez would want to comments on that.

20 I guess that's the idea, from what I understand.

21 MR. GOMEZ: It got so big with 33 institutions, each  
22 region having eleven institutions, in the geographic North,  
23 Central and Southern, and in addition, they have every -- all  
24 responsibility for those eleven institutions, whether it's  
25 medical, mental health, feeding, you name it. If there's a  
26 problem, that's the person we look at.

27 And so, it has made it easier from an administrative  
28 standpoint.

1 CHAIRMAN LOCKYER: I keep telling you, you're growing  
2 awful fast.

3 Other questions? Senator Ayala.

4 SENATOR AYALA: Yes, I have questions regarding  
5 overtime.

6 You are one of the highest of all the prisons in  
7 California, with San Quentin being number one.

8 I understand the way you assign the overtime is to  
9 senior officers, and if they refuse or care not to, then they  
10 offer it to a lower echelon officer, which means it's always  
11 expensive because the senior members are getting paid more.

12 According to the Department, the overtime cost for  
13 '93-94 was \$164.7 million for overtime.

14 Why is the overtime so high in your prison? What  
15 causes it to go up like that?

16 MR. CAMBRA: Overtime at Pelican Bay is partially  
17 driven by the mission.

18 SENATOR AYALA: I'm sorry?

19 MR. CAMBRA: Partially driven by the mission. When we  
20 take people out to outside medical, outside court -- we have a  
21 lot of court -- inmates still assault each other.

22 With our mission, we have the higher inmates that are  
23 more prone to do that. And when we take them out, typically you  
24 need good security on those men to provide the safety for the  
25 community.

26 Madrid has driven overtime. We were faced with court  
27 mandates. We had to actually pull inmates -- these inmates,  
28 before we moved them into Psych Services Unit in the month of



1 December, we had to start providing services in the SHU Unit,  
2 which meant we had to develop a pair of officers to pull those  
3 men out of their cells into the Security Housing Unit, take them  
4 down into conference rooms, bring clinicians into the conference  
5 room, and provide group counseling, and what have you.

6 SENATOR AYALA: Is this true of all the institutions?

7 MR. CAMBRA: No, sir. This was unique to Pelican Bay  
8 because of the Madrid decision.

9 So, basically, last year the overtime costs were around  
10 five-and-a-half million dollars at Pelican Bay, 5.6 million.

11 I think without the Madrid factored out of that, we  
12 would have brought that down by a million dollars. We aren't  
13 going to. We're going to be about the same, I believe, at year  
14 end close this year because of Madrid.

15 I think we can make strides in that area. We've hired  
16 a lot of PIs. Our PI count at the end of this month should be  
17 up around 50 or 60. And if you have a good base of PIs, you can  
18 hire the PIs before you have to go to seniority.

19 SENATOR AYALA: If you rotated the offering of these  
20 overtime hours across the board, wouldn't that save you money  
21 instead of offering to the high paid correctional officers  
22 first, and normally they take it. So, those on the lower pay  
23 scale never get a chance to work overtime.

24 MR. CAMBRA: Yes, sir, but we have an MOU that governs  
25 the assignment of overtime by seniority, with the exception PIs.  
26 I can go to PIs first, and what have you. But after the PIs --

27 SENATOR AYALA: Is it through the Correctional  
28 Officers Union that you have this?

1 MR. CAMBRA: Yes, sir.

2 SENATOR AYALA: Are there times when they have to work  
3 two shifts back-to-back, the correctional officers, especially  
4 Under the SHU Unit, they work back-to-back overtime?

5 MR. CAMBRA: Yes, sir, that's possible. You work a  
6 double, is what the staff call it.

7 SENATOR AYALA: What are the special problems that you  
8 care to share with the Committee, other than crowded  
9 conditions? Every prison has that, of course.

10 Is there any other problem that you will be facing even  
11 at greater length?

12 MR. CAMBRA: The biggest challenge we face at Pelican  
13 Bay is satisfying the court in the relation of delivery of  
14 medical and mental health services, I believe. That's going to  
15 be the biggest challenge when we get into the monitoring phase  
16 of this decision, is to try to satisfy the requirements the  
17 court has laid out.

18 SENATOR AYALA: You have a hospital on the grounds  
19 there?

20 MR. CAMBRA: We have an infirmary, and it's going to  
21 roll-over into a CTC, but we also have the Psych Services Unit.  
22 We have an EOP Unit, 64-bed EOP which provides a level of mental  
23 health services to inmates in more of a general population  
24 setting as opposed to a confined setting like lock-up.

25 CHAIRMAN LOCKYER: Let me interrupt just to suggest  
26 that too many LTPs and QEDs produce NOs.

27 Go ahead. We're trying to follow.

28 MR. CAMBRA: Is there a doctor in the house?

1 SENATOR AYALA: Psychiatrist.

2 MR. CAMBRA: In fact, Dr. Dizmang, my Chief  
3 Psychiatrist, is here.

4 But EPO is Enhanced Out-patient Program. And basically  
5 what the Department's trying to do is provide mental health  
6 services in an out-patient setting wherever possible, like in  
7 the community at large.

8 The Department has developed basically three levels.  
9 You have in-patient, which we use DMH, we contract with DMH for  
10 in-patient services. We have EOP, Enhanced Out-patient, for  
11 those inmates that are suffering from a major mental illness  
12 that needs a pretty high level of treatment, but they don't need  
13 an in-patient bed, basically.

14 And then the third level is what we call C-3MS, which  
15 is Clinical Case Management. And those are men that basically  
16 are medication compliant, they're doing fine in the general  
17 population, but they need to be tracked by mental health  
18 professionals just to make sure they continue to do that.

19 So, the goal of the program, basically, in our  
20 Department is to try to push these people down into the lowest  
21 security possible where they can still function and manage  
22 within our society.

23 SENATOR AYALA: Is there a narcotic problem within the  
24 camp or the grounds there in terms of the inmates greater than  
25 any other prison we have in California?

26 MR. CAMBRA: Yes, sir. Just like in any prison.

27 SENATOR AYALA: What are we doing about that?

28 MR. CAMBRA: Naturally, we have a security squad that



1 continually gets information from the line, does searches,  
2 receives information, might have visitors who are bringing in  
3 drugs.

4 SENATOR AYALA: Can't use dogs anymore.

5 MR. CAMBRA: We don't use dogs.

6 SENATOR AYALA: Have you ever used them?

7 MR. CAMBRA: We brought one dog in because we had a  
8 package problem, and we took them into R and R, and you know,  
9 used them in R and R to screen packages coming in from outside.  
10 And then we tightened up the system of our package delivery, and  
11 we went to one sole vendor that the inmates could order from to  
12 try to tighten the security.

13 We were getting Radio Shack packages where, what we  
14 found out was that the inmates' families would go into Radio  
15 Shack, and they would actually be given access to the product  
16 before it was packaged and sent in. So, we were getting  
17 narcotics in that way.

18 Security Housing Unit has pretty good security. The  
19 main way the inmates are getting drugs in there is through  
20 mail. And they actually put black tar heroin in the corners of  
21 the envelope seals. And the staff discover that from time to  
22 time and do a pretty good job.

23 SENATOR AYALA: Didn't you have dogs sniffing that at  
24 CIM at one time?

25 MR. GOMEZ: We had a dog sniffing program for visitors  
26 coming in. They were sniffing the visitors in terms of bringing  
27 narcotics into the institution.

28 SENATOR AYALA: And somebody complained?

1 MR. GOMEZ: We lost a court case on that that did not  
2 allow us to turn them away.

3 But we still use dog sniffers occasionally, but we  
4 don't have the kind of capacity we like.

5 Although, I will tell You, Senator, since you ask every  
6 warden pretty much this question, there is some new technology  
7 coming out that we believe in the next twelve months to two  
8 years that will provide us with ioniscopes and other materials,  
9 which we'll be able to push it up -- you'll be able to detect  
10 narcotics on an individual. We think that's probably twelve  
11 to --

12 SENATOR AYALA: At what point? At the entrance to the  
13 institution, or once it's inside?

14 MR. GOMEZ: Anywhere. What we'd be able to do is  
15 detect whether you have narcotics on you.

16 Now, we believe we can use that very judiciously -- or  
17 very aggressively on inmates, very judiciously on visitors.

18 I'm hopeful, we're doing tests at two institutions  
19 right now, that that kind of technological capability, which is  
20 not invasive, which does not do an x-ray, will give us in the  
21 future a much better opportunity to prevent drugs from coming  
22 into the an institution.

23 I think technology is going to be a good solution  
24 there.

25 SENATOR AYALA: Thank you, Mr. Chairman.

26 CHAIRMAN LOCKYER: Senator Petris, did you have some  
27 questions?

28 SENATOR PETRIS: What's the inmate population at

1 Pelican Bay?

2 MR. CAMBRA: We have approximately 1580 beds for  
3 Security Housing Unit, lock-up cases. We have a 200-bed Level I,  
4 minimum security facility, and we have about 1830 beds devoted  
5 to general population Level IV inmates.

6 SENATOR PETRIS: What's the total statewide, all  
7 prisons? I should have asked Mr. Gomez that.

8 MR. CAMBRA: They're probably pushing up around 136 or  
9 137,000 inmates at this time, I would guess.

10 SENATOR PETRIS: Thanks.

11 CHAIRMAN LOCKYER: I note that both the Special Master  
12 and the judge say positive things about your administration.  
13 That's, I guess, reassuring, the judge having once been a member  
14 of Senator Petris's law office.

15 SENATOR PETRIS: We practiced law together.

16 CHAIRMAN LOCKYER: The gaffe that I keep hearing is  
17 really a Central Office problem more than a site, so this is  
18 probably something you're unwilling to comment on, but I'll ask  
19 the question just so it's noted in the record.

20 And I'm hopeful that you may have some wisdom that's  
21 derived from having worked both in the Central Office and in  
22 prison settings, so you've kind of been back and forth. Maybe  
23 that gives you some perspective that others don't have that  
24 would do primarily one or the other.

25 But the question that we hear asked routinely really  
26 has to do with the Health Services Division, or Health Care  
27 Services Division, and whether they've been up to the task of  
28 assisting prison sites like Pelican Bay to fully comply with



1 their mission.

2 I guess a way to ask that is, who do you see from  
3 Central Office with respect to your health, both health and  
4 mental health problems?

5 MR. CAMBRA: Central Office sent me Dr. Steinberg as  
6 the CMO.

7 CHAIRMAN LOCKYER: That's on site now?

8 MR. CAMBRA: Central Office sent me Dr. Dizmang as my  
9 Chief Psychiatrist. Without those two individuals, we wouldn't  
10 have progress going right now.

11 CHAIRMAN LOCKYER: How long ago did those --

12 MR. CAMBRA: Dr. Dizmang's been there, I think, around  
13 45 days, Dr. Steinberg longer, about 60 days.

14 CHAIRMAN LOCKYER: But still, fairly recent, this year  
15 or close to it.

16 MR. CAMBRA: I think the big key there is that the  
17 Director can't just produce out of the sky 130 PYs. We needed  
18 PYs to fix the medical problem. We needed personnel years. We  
19 needed resources.

20 In the force arena, I felt that I was able to bring  
21 about change by developing a tight policy, where you had  
22 management intervention, you video taped, you had good review,  
23 and get out in front of the employees on all the watches and  
24 tell them what you wanted, basically. You provided the  
25 training, gave them a copy of the policy individually for each  
26 officer, and sergeant, and lieutenant. And then, I went around  
27 to each watch twice and basically let them ask me questions  
28 about it, because these have gray areas, and that's only way you

1 can really get across the message.

2 In the medical and mental health area, that required  
3 resources. And in state government, it takes time to get  
4 resources, basically.

5 I think that we received resources after being in  
6 headquarters real rapidly, very frankly. I mean, we put  
7 together a BCP in July; we activated a PSU that had over 100  
8 positions December 1. In state government, that's not dragging  
9 your feet.

10 I'm not sure that the courts understand that. I think  
11 part of those comments come from that.

12 CHAIRMAN LOCKYER: Do you think the court is impatient  
13 with the degree of progress?

14 MR. CAMBRA: Well, I think the court is holding our  
15 feet to the fire to correct the deficiencies. And they cited  
16 the deficiencies.

17 I think Judge Henderson issued a balanced order, and  
18 when Pelican Bay opened up, there wasn't any doctors at Pelican  
19 Bay. And for us to, you know, open a prison like that, and put  
20 the inmates in it, not and have any doctors, it's pretty hard to  
21 stand up there and say you have adequate medical care.

22 CHAIRMAN LOCKYER: How long did it take to get a doc?

23 MR. CAMBRA: I'm not certain how long it took.

24 CHAIRMAN LOCKYER: It was before your tenure?

25 MR. CAMBRA: Yes, it was way before my tenure.

26 But we've really expanded the number of positions that  
27 we've had due to the, I think, aggressive approach the  
28 Director's taken, very frankly.

1 CHAIRMAN LOCKYER: Well, we always want to learn about  
2 how the system operates under a federal court order, since  
3 that's probably what we're looking at in the future.

4 Director Gomez loves the idea.

5 MR. GOMEZ: We're better than that, Senator. As a  
6 state, we're better than that.

7 CHAIRMAN LOCKYER: I could ask you a lot of questions  
8 about Mr. McKinsey's relationship with the effort, but I think  
9 you'd be much too diplomatic, which is probably -- that's  
10 probably a compliment.

11 I'll for the record say that's what we hear too much  
12 of, is that Mr. Gomez took care of one of his old friends, and  
13 it's not the right job for him.

14 I missed some of the comments that Senator Ayala had  
15 asked about, namely overtime. When we hear 164 million  
16 overtime, is that system wide?

17 MR. CAMBRA: Yes, sir.

18 CHAIRMAN LOCKYER: And then you had a number that was  
19 specifically Pelican Bay that I missed.

20 MR. CAMBRA: Last year it was 5.6 million.

21 CHAIRMAN LOCKYER: And that's what you had hoped to  
22 bring down by a million, but were skeptical because of the  
23 demands of the court order?

24 MR. CAMBRA: That's correct, sir.

25 CHAIRMAN LOCKYER: Are there obstacles to getting or  
26 recruiting, I guess, what we call PIEs, Permanent Intermittent  
27 Employees? Are those hard to recruit?

28 MR. CAMBRA: Up there we're doing pretty well. We



1 actually have a stable work force. We don't have a high  
2 turnover up there. We have very senior staff for the most part  
3 in comparison to a lot of the prisons in Southern California.

4 CHAIRMAN LOCKYER: Why would that be? They want to live  
5 in that nice place?

6 MR. CAMBRA: I think so.

7 CHAIRMAN LOCKYER: They like rain?

8 MR. CAMBRA: Maybe they like rain. They'd better like  
9 rain up there.

10 CHAIRMAN LOCKYER: If there's no other difference in  
11 terms of pay scales or anything like that.

12 MR. CAMBRA: Actually, the impact on our PIs, the  
13 reason it went down was activation of the PSU so rapidly. So  
14 actually, we rolled several PIs over into permanent positions,  
15 and it takes time for the Academy to catch up and get us back up  
16 to 60 or so.

17 CHAIRMAN LOCKYER: Other questions from Members? Yes,  
18 Senator Petris.

19 SENATOR PETRIS: You mentioned the Chief Psychiatrist.  
20 How many personnel are there in the mental health part of your  
21 program?

22 MR. CAMBRA: There's about 41 total positions. There's  
23 8 psychiatrists now, positions that we have. We have 2 state  
24 psychiatrists on staff, a senior and a staff. We have  
25 Dr. Dizmang, who's up from Vacaville as our Chief. Then we  
26 contract out for the other psychiatrists, and we're recruiting.

27 The Director authorized an incentive bonus of about  
28 \$15,000 a year, 1200 bucks a month for a psychiatrist if they'll

1 come up to Pelican Bay. And right now, I think, through the  
2 activities of Dr. Dizmang, we're on the verge of recruiting  
3 some. We have a ways to go. We haven't actually pulled any in,  
4 but with the incentive bonus, and with a credible Chief  
5 Psychiatrist, I think we'll start having some success.

6 SENATOR PETRIS: Do you have any communication with our  
7 Department of Mental Health to get some ideas on how to handle  
8 that? Do they come in work and with you?

9 MR. CAMBRA: The doctors, you know, using the incentive  
10 bonus, and the doctors are the people that are working the  
11 recruitment effort there.

12 I believe that the key there is, if you have credible,  
13 you know, a credible CMO and a credible Chief Psych that you  
14 improve your recruitment effort, and we haven't had that in the  
15 past.

16 SENATOR PETRIS: You're having difficulty recruiting  
17 people. I don't suppose that's the easiest job for them to apply  
18 for.

19 MR. CAMBRA: Psychiatrists, psychologists were no  
20 problem. Physicians, surgeons, no problem. Nurses, we have a  
21 few vacancies, but basically we're doing pretty well. Psych  
22 techs, we actually recruited from the Department of Mental  
23 Hygiene several people out of Camarillo and what have you when  
24 we activated up there, recreational therapists, psych techs and  
25 what have you.

26 But psychiatrists continue to be a problem.

27 SENATOR PETRIS: I guess it'll take awhile before you  
28 know the full impact of the new emphasis on the mental health

1 problem.

2 I felt for a long time that we haven't helped your  
3 system get the resources you need for the mental health  
4 problems, and we probably should have had a state policy of  
5 having a more intensive coordination between the Department of  
6 Mental Hygiene and your Department to supply people and help  
7 recruit people.

8 A lot of people feel that anybody who goes out and  
9 commits a crime has an emotional or mental problem to begin  
10 with. Then you aggravate it by all the other conditions, and  
11 stresses, and so forth.

12 I remember when I was doing some work in that field,  
13 the experts told us that the percentage of people on the mental  
14 health list always went up during unemployment. You get a big  
15 recession, big jump in mental health problems. That's pretty  
16 mild compared to what happens in a prison. I mean, I would  
17 think it would go up ten times as high.

18 We really should have a lot more resources from as many  
19 places as we can to help because over-all, if we take care of  
20 that problem, I suppose it would reduce the tensions and  
21 difficulties you have in administering the prison  
22 system.

23 MR. CAMBRA: I agree with you, Senator, especially in  
24 the end of the spectrum that Pelican Bay has been assigned in  
25 those Security Housing Units, as you receive the inmates that  
26 display the most bizarre and violent behavior.

27 I think the Department of Corrections has become  
28 probably the primary deliverer of mental health resources for



1 the state of California, very frankly. And we historically  
2 haven't done well in that area, and we do need resources to  
3 deliver it.

4 I believe that over the years, we've had people that  
5 have displayed this very difficult behavior, ended up basically  
6 in a custody arena, and the officers are stuck with them. They  
7 can't do anything other than accept them in those kinds of  
8 housing units. And I've worked several of them in my career.  
9 It's very difficult to manage -- manage that behavior.

10 I think by combining clinical resources with custody is  
11 the answer, because I believe the clinical resources can bring  
12 down their behavior. We've had some experience with that at  
13 Pelican Bay, where we actually went into C-1 and C-6, where we  
14 housed the most challenging folks that had mental illness and  
15 displayed assaultive behavior.

16 When we did start pulling these people out, even in  
17 waist chains, in group settings, and had clinicians dealing with  
18 these people as well as dealing with them on the tier, you go in  
19 and talk to the officers and they'll tell you that that behavior  
20 reduced, and it made it safer for them.

21 SENATOR PETRIS: Thank you.

22 SENATOR AYALA: I have one more question, Mr.  
23 Chairman.

24 In 1995, the prison had a number of shooting incidents  
25 in cell extractions. How does that compare to the prior four  
26 years before 1995? Has it gone up or down?

27 MR. CAMBRA: At Pelican Bay, the shooting incidence at  
28 Pelican Bay has dropped drastically.

1           SENATOR AYALA: Has what?

2           MR. CAMBRA: The shooting incidence at my prison in  
3 1995 has dropped drastically.

4           We had three warning shots fired at Pelican Bay in  
5 1995. Probably the previous year, you're talking 32 incidents  
6 of lethal force use, primarily warning shots with -- I think we  
7 had about three firing for effect. So, the shooting incidents  
8 have drastically been reduced.

9           SENATOR AYALA: Is that higher or lower than the prior  
10 four years?

11          MR. CAMBRA: It's much lower now.

12          CHAIRMAN LOCKYER: I'm unaware of what finally was  
13 done. I assume there was some retrofit money spent on the  
14 problem of the prisoners being able to open the cell doors?  
15 Fill us in on that.

16          MR. CAMBRA: It was a design flaw. My understanding is,  
17 we won litigation. There was litigation in regard to that. We  
18 came out on the positive end of the litigation and received some  
19 money that it cost us to retrofit the doors in SHU.

20          CHAIRMAN LOCKYER: So, that's taken care of?

21          MR. CAMBRA: Yes, sir.

22          CHAIRMAN LOCKYER: Are there people who wish to say  
23 something on behalf of this confirmation or oppose? We'll take  
24 either side, but let me start with the yes side, if there's  
25 anyone that wants to make a comment.

26          I guess Mr. Hauser, on the no side, if you want to come  
27 up, sir.

28          ASSEMBLYMAN HAUSER: We'll try again, Mr. President.

1 CHAIRMAN LOCKYER: Okay.

2 ASSEMBLYMAN HAUSER: Members of the Committee, first  
3 of all, I want to make it clear that I'm not here directly  
4 opposed to the confirmation of Mr. Cambra as Warden at Pelican  
5 Bay. In fact, we've never met before.

6 CHAIRMAN LOCKYER: Mr. Cambra, Assemblyman Hauser.

7 ASSEMBLYMAN HAUSER: Good to meet you.

8 However, I guess partially as a result of term limits,  
9 I'm using every forum I can to move forward with an issue that I  
10 believe is critically important to not only the North Coast of  
11 California, but to more and more of our facilities.

12 A little bit of history. When Pelican Bay was being  
13 considered, or Slammer by the Sea, or Prison of the Redwoods, or  
14 whatever Barry wanted to call it, Senator Keene and I felt that  
15 we were -- received a commitment from the Department that  
16 prisoners being -- or inmates being released from Pelican Bay  
17 would be physically transported back to their counties of  
18 commitment.

19 Soon after the prison was built and the first prisoners  
20 started coming out, we found that that was not the case. They  
21 were, in fact, given a bus ticket and some money and sent on  
22 their way. And basically in my district, through a 300-mile  
23 district before they reached the first major metropolitan area,  
24 much less the area where they'd be returned to.

25 Twice in the last few years, this Legislature has  
26 overwhelmingly passed legislation, bipartisan, both Houses,  
27 which would direct the Department to establish a transportation  
28 system which would return those inmates to their counties of



1 commitment, or some modified form of that.

2 And as Mr. Cambra has noted, some of the most predatory  
3 people are being committed to Pelican Bay, and these are not  
4 exactly folks that you'd like to have out on your street after  
5 they've spent 23 to 24 hours a day in the Security Housing Unit,  
6 and simply being turned out the front gate, or taken to the bus  
7 depot, either case.

8 CHAIRMAN LOCKYER: You'd rather they be dropped off in  
9 Senator Petris's --

10 ASSEMBLYMAN HAUSER: I would rather they would be  
11 returned to the Relocation Center closest to where they would  
12 have at least some support mechanism, through their probation,  
13 or their parole officer, through their community support.  
14 Whereas, now they have absolutely no support mechanism.

15 CHAIRMAN LOCKYER: Assemblyman, you say twice we've  
16 passed something? What was that?

17 ASSEMBLYMAN HAUSER: Both times the legislation passed;  
18 both times it was vetoed by the Governor.

19 CHAIRMAN LOCKYER: That would have required the  
20 transport.

21 ASSEMBLYMAN HAUSER: That would have required the  
22 transportation.

23 We tried to amend last year's version to resolve every  
24 question that the Department had, as far as the availability of  
25 empty buses, the timing, the type of prisoner that would have to  
26 be -- or inmate being released that -- would have to go on these  
27 buses, et cetera.

28 It's still possible. I don't believe it's necessary to

1 have a piece of legislation, that the Department could do this  
2 on their own, and that would be fine with me, even though I've  
3 put in another bill, of course, to try again.

4 But I believe the pressure needs to be kept on the  
5 Department, whether it's through rejecting a confirmation  
6 somewhere, or simply bringing it to the Department's continued  
7 attention, the need to establish some sort of system.

8 And it's is not just Pelican Bay. Other Legislators  
9 from the Redding area, from Calpatria, from the other  
10 facilities, are now coming to me, and I'm sure to other Members,  
11 and saying: we've got a problem with our facilities as well,  
12 especially anywhere where we have the Security Housing Units  
13 which, by their very nature, hold the worst of the worst. And  
14 again, people that have no mechanism for transitioning back out  
15 into society and have created some serious problems.

16 So, it's not just a fear that exists within some of our  
17 communities. We have actually had the shooting of a sheriff's  
18 deputy in Sonoma County by one of these people, who should never  
19 have been put out on the street, but because of the terms of his  
20 confinement, had to be released.

21 We at least should have had some sort of mechanism, in  
22 his case, San Diego, to try to deal with those issues.

23 Anyway, that's my point. Again, I want to make it  
24 clear that I have --

25 CHAIRMAN LOCKYER: It's not directed personally.

26 ASSEMBLYMAN HAUSER: It's not directed at this  
27 particular warden. Again, he may be the most qualified person  
28 possible.

1 I just want to use every opportunity I have, and I will  
2 keep doing it, to bring this issue to the attention of not only  
3 the Legislature, but the Department, to try to get it resolved.

4 CHAIRMAN LOCKYER: What's the clock on this issue?

5 MS. MICHEL: March 22nd.

6 ASSEMBLYMAN HAUSER: I understand.

7 CHAIRMAN LOCKYER: We have what everyone would regard  
8 as an exemplary professional.

9 I would guess that, while you've wanted to raise the  
10 issue, make sure people are aware of it, you wouldn't want to  
11 interfere with some person's career.

12 ASSEMBLYMAN HAUSER: Probably not, but I'll be back on  
13 others.

14 CHAIRMAN LOCKYER: That's fair, too.

15 I don't know, Warden, if you want to comment on the  
16 issue, I'll ask Mr. Gomez to come up for a systemic discussion  
17 of the matter, but if there's anything that's relevant to your  
18 administrative practices.

19 MR. CAMBRA: I can tell you what I'm doing.

20 Basically, since January 1, we've paroled approximately  
21 55 inmates out of the Security Housing Unit. I put 25 of those  
22 people on a bus, closer -- a prison closer to their county that  
23 they were paroled into.

24 CHAIRMAN LOCKYER: So, if they are, let's say,  
25 convicted in Alameda County, we don't have a prison, they would  
26 come back to Vacaville, or something like that?

27 MR. CAMBRA: Or San Quentin, yes, sir.

28 Of the Level IVs, we've released --



1 CHAIRMAN LOCKYER: What do they do? They are required  
2 to just check in at the prison?

3 MR. CAMBRA: Well, it varies, depending on the  
4 case.

5 CHAIRMAN LOCKYER: How does this work?

6 MR. CAMBRA: It's individual case issues.

7 CHAIRMAN LOCKYER: What's typical?

8 MR. CAMBRA: If you have -- we've had some inmates that  
9 had mental illness, for example. And we contact Paroles.  
10 Naturally, we network. We have a process of documents and  
11 information sharing.

12 And with a lot of the inmates that are mentally ill,  
13 we'll transport them to a prison closest to their county of  
14 parole. And the parole agents will actually pick the person up  
15 and take them out to out-patient programs within the Parole  
16 Division.

17 So, it depends on the case factors of the inmates  
18 involved. The ones I'm talking about, I'll move them -- if a  
19 person's paroling to Alameda, I'll probably put them on a bus,  
20 say, down to San Quentin.

21 CHAIRMAN LOCKYER: So, of the 25, these weren't  
22 mentally ill, or some were?

23 MR. CAMBRA: These were SHU, primarily, lock-up guys.

24 ASSEMBLYMAN HAUSER: Excuse me, but you're talking  
25 about a Corrections Department bus, not Greyhound.

26 MR. CAMBRA: Yes, sir.

27 CHAIRMAN LOCKYER: On the 25?

28 MR. CAMBRA: Yes, sir.

1 ASSEMBLYMAN HAUSER: That's what we're asking for.

2 CHAIRMAN LOCKYER: That's what you want. So, your  
3 concern is the about the other 30, whatever happened with them?  
4 What did we do with them?

5 MR. CAMBRA: Those I put on a Greyhound bus.

6 What we do -- Pelican Bay since it opened, we'd go down  
7 to the bus depot. The staff would wait for the inmate to get on  
8 the bus and the bus to leave. And that's been our standing  
9 policy.

10 CHAIRMAN LOCKYER: So, you know they got on the bus?

11 MR. CAMBRA: Yes, sir.

12 CHAIRMAN LOCKYER: Have you had any bus jackings?

13 MR. CAMBRA: Not that we know of.

14 CHAIRMAN LOCKYER: What happens to these 30? They can  
15 get off somewhere along the way?

16 MR. CAMBRA: They can get off if they want to.

17 CHAIRMAN LOCKYER: How many problems have you had?

18 MR. CAMBRA: There's been a couple people that's got  
19 off in Humboldt County, or we had one guy get off in Orrick.  
20 The bus driver through him off, basically, because he raised  
21 heck on his bus, so he threw him off the bus in Orrick, and  
22 there's not much going on in Orrick.

23 We've developed a system --

24 CHAIRMAN LOCKYER: He was elected Mayor, I heard.

25 MR. CAMBRA: We're starting to communicate with local  
26 CHP on all those who we do put on the bus. We've developed a  
27 form. We've talked to local CHP; they have the network on the  
28 road, and we let them know who we're putting on the bus.

1           CHAIRMAN LOCKYER: Now, if you're hauling 25 somewhere,  
2 why can't you haul 55 somewhere? Is there some fiscal  
3 constraint?

4           MR. CAMBRA: Well, I don't think that we have enough  
5 buses, very frankly. I mean, we do not receive a bus a week at  
6 Pelican Bay. We average a little more than a bus every two  
7 weeks, but we don't have a bus a week. These people are getting  
8 out all the time.

9           CHAIRMAN LOCKYER: You can't hold them until the bus  
10 shows up?

11          MR. CAMBRA: No, we have to release on the release  
12 date, yes, sir.

13          CHAIRMAN LOCKYER: How do we establish these dates?  
14 That's the Board of Prison Terms, or the original sentencing  
15 court?

16          MR. CAMBRA: Yes, sir, depending on whether they're  
17 indeterminate or determine sentence.

18          ASSEMBLYMAN HAUSER: Excuse me, Senator, but Senator  
19 Thompson's bill allowed some flexibility in that because of the  
20 notification process of notifying, that if they don't show up  
21 within the 48 hours. That's something we didn't have before,  
22 but it also meant they couldn't be released over a weekend.

23          So, there's -- that legislation allowed -- that passed  
24 last year -- allowed some flexibility in this process.

25          CHAIRMAN LOCKYER: That was vetoed? The bill was  
26 vetoed?

27          ASSEMBLYMAN HAUSER: No, Senator Thompson's bill.

28          CHAIRMAN LOCKYER: This is one that was signed.



1 ASSEMBLYMAN HAUSER: This one was signed that deals  
2 with notification if they don't show up within the 48-hour  
3 period at their parole officer.

4 And again, to allow that, it provided some flexibility  
5 to Corrections on the release time. We tried to provide that  
6 same flexibility.

7 CHAIRMAN LOCKYER: We may not be permitted to override  
8 what the court's date would be; can we?

9 MR. CAMBRA: 856, I think, is the bill that you're  
10 talking about. What it allowed us to do is, I think it's  
11 inmates committed prior to January, you could move it back to  
12 Friday. If you had a weekend release, you could release on a  
13 Friday.

14 CHAIRMAN LOCKYER: You can't hold them longer.

15 MR. CAMBRA: You can't hold them longer.

16 CHAIRMAN LOCKYER: But you can let them out a couple  
17 days earlier to catch the bus?

18 MR. CAMBRA: Yes, sir, right.

19 I think after January, we can actually hold them until  
20 a Monday, and that's the flexibility, that's the window.

21 CHAIRMAN LOCKYER: That may assist with the bus  
22 availability?

23 MR. CAMBRA: If the bus happens to roll on a Friday or a  
24 Monday.

25 Now, typically we get mid-week buses because of the  
26 distance. And I have put inmates in a car when a real critical  
27 situation -- it costs a lot of money, but I have done that, you  
28 know, in a very few cases where they're really people that we're

1 worried about.

2 CHAIRMAN LOCKYER: Senator Ayala.

3 SENATOR AYALA: I think that Mr. Hauser's point is well  
4 taken.

5 I have four prisons in my district and border another  
6 one. The problem sometimes is that you have to return them to  
7 where they were convicted. Like in Los Angeles, maybe they  
8 drove in that day, and they got picked up and convicted three  
9 months later, but they came from somewhere else. They came from  
10 Phoenix or somewhere else, so you send them back to L.A.  
11 They're not really residents of L.A. But that's where you send  
12 them back if you could.

13 So, there's a problem returning people to the place  
14 where they were incarcerated or they were convicted. They may or  
15 may not be residents of that area.

16 ASSEMBLYMAN HAUSER: All of those being paroled do have  
17 a specific parole location that they have to report back to a  
18 parole officer. That's what we're asking.

19 SENATOR AYALA: The Board of Prison Terms is the one  
20 that deals with that, do they not? Don't they decide where  
21 these people are going to be released to their probation  
22 officer?

23 MR. CAMBRA: They primarily release back to the county  
24 of commitment.

25 SENATOR AYALA: The county where they were convicted.

26 MR. CAMBRA: Yes, sir.

27 SENATOR AYALA: Then we go back to what I just said  
28 earlier. They could be from somewhere else, arrive at the

1 county the day before they were arrested and convicted, and  
2 that's where they send them back, although they may be from  
3 somewhere else.

4 MR. CAMBRA: That's true.

5 CHAIRMAN LOCKYER: Thank you, Assemblyman.

6 Mr. Gomez, do you want to help to educate us a little  
7 about this whole problem? And I would, just to keep it in  
8 context, mention that the 165 million in overtime is pretty  
9 substantial, and this may be one of the cost drivers of overtime  
10 which could be significant.

11 MR. GOMEZ: I don't think it is. I think the 165 is  
12 significant.

13 We're hiring a significant number of permanent  
14 intermittent employees to try to reduce that amount.

15 Relative to transportation, we release 90,000 inmates a  
16 year. And what Assemblyman Hauser is proposing could be for all  
17 90,000 to create bus system to take them back to the county.  
18 That's massive.

19 Now, his individual circumstances in the Security  
20 Housing Unit, I've sat down and discussed with Mr. Cambra, we're  
21 looking at trying to take people and bringing them a month early  
22 out of -- or three weeks early out of Security Housing. And as  
23 he said, he's already gotten 50 percent of them in that way.

24 But we oppose any legislation that mandatorily  
25 requires us to return. We believe, Senator, that as one prison  
26 gets it, every prison will get it. And 90,000 \$100 apiece, or  
27 \$80 apiece, is very expensive. And it is also, believe it or  
28 not, a logistics nightmare in the Department of Corrections. We



1 cannot FAX these people from one place to another.

2 If we take a bus, when that bus ends up someplace,  
3 there has to be beds vacant for them to sleep that night. When  
4 they are brought down to San Quentin, as an example, they don't  
5 check in. We lock them up. So, when they come to San Quentin,  
6 there's got to be a bed available for them at San Quentin.

7 So, there's lot of logistics on this. Although I do  
8 understand Assemblyman Hauser's concerns, I think we're trying  
9 to administratively deal with that. We're going to get better  
10 at what we're doing, and is trying to bring them out of there  
11 prematurely.

12 Now, there are many people in the Department think that  
13 person should be in SHU until the last day, because that's what  
14 their sentence is. We're trying to -- in working with the  
15 institution, on those individuals that they're feeling  
16 comfortable with, bring them out of there early, and for lack of  
17 a better term, looking at staging them. But we're looking at a  
18 very few number. We're looking only at Pelican Bay at this  
19 point, and we're looking at it administratively.

20 We are talking \$10-15 million, and there's a lot better  
21 way, in my mind, to spend \$10 or 15 million than mandating that  
22 each person is brought back to the county of commitment by the  
23 Department of Corrections.

24 They are delivered to us by the sheriffs. We do not go  
25 get them. So, our bus system really is not county-related. It  
26 is institution-related.

27 CHAIRMAN LOCKYER: Senator Lewis.

28 SENATOR LEWIS: Mr. Gomez, I may have misunderstood

1 you. Would you repeat number again, how many are released every  
2 year?

3 MR. GOMEZ: We release about 90,000 inmates a year.  
4 We're getting 105,000 inmates in. We're releasing 90,000, and  
5 that is a net plus 15,000. That is on -- each month, we're  
6 releasing over 7500 people, and each month we are receiving --  
7 we are receiving -- about 9,000 individuals. So you can imagine  
8 the processing of that many people in a period of time.

9 So, much of what we do in the prison system is  
10 jail-like in that those people that are serving short terms --  
11 three months, six months, nine months, twelve months -- if you  
12 get a three-month person, four people occupy one bed in a year.  
13 So, there's a tremendous turn over on the lower end of the  
14 system at the Department of Corrections, which is this  
15 short-term inmate.

16 And it is something that I'll be discussing tomorrow  
17 with Senator Lockyer in the SB 760 conference. I think it's  
18 tomorrow, relative to that short-term.

19 Tremendous turn over. People do not realize that for  
20 those 105,000 people that come in, I have to do a TB test, a  
21 full medical, a psychiatric screening for every single one of  
22 those people when they enter into our system. And then we have  
23 to, as they leave, do certain functions also.

24 So, there's a tremendous churning effect in that  
25 population.

26 The net 15,000 that I talked about, the difference  
27 between 90,000 being released and 105,000 being received, is the  
28 lengthening of sentences that has really gone over last 10-12

1 years. People are staying with us longer than they used to  
2 stay, but the rate -- velocity in Corrections, very high  
3 velocity.

4 SENATOR LEWIS: I guess I didn't mishear you. The  
5 90,000 figure really caught me by surprise.

6 MR. GOMEZ: I may be off a thousand one way or the  
7 other.

8 SENATOR LEWIS: It's just a staggering number.

9 Can you give me an inkling, of the 90,000 that were let  
10 go in the last year, is their average length of incarceration?

11 MR. GOMEZ: Twenty-three months.

12 SENATOR LEWIS: Thank you.

13 CHAIRMAN LOCKYER: That's a median?

14 MR. GOMEZ: Yes.

15 SENATOR PETRIS: It occurs to me, if they formed an  
16 alumni association, it would be the biggest in the state.

17 MR. GOMEZ: Could be the biggest pack of all time.  
18 It's huge. The numbers are just huge, just absolutely huge.

19 CHAIRMAN LOCKYER: Some suggest that they did, in the  
20 joint if not before.

21 Did you want to add anything else, Mr. Gomez? Always  
22 nice to see you here.

23 MR. GOMEZ: It'll be a pleasure to see you tomorrow.

24 CHAIRMAN LOCKYER: Let's see, did you care to close in  
25 any way, Mr. Cambra? I think we're ready to roll.

26 MR. CAMBRA: No, I think you've pretty well covered all  
27 the issues.

28 CHAIRMAN LOCKYER: I'd say we have.



1 Senator Lewis, did you want to make a motion on this?

2 SENATOR LEWIS: I'll move confirmation.

3 CHAIRMAN LOCKYER: Let's call the roll.

4 SECRETARY WEBB: Senator Ayala. Senator

5 Lewis.

6 SENATOR LEWIS: Aye.

7 SECRETARY WEBB: Lewis Aye. Senator Petris.

8 SENATOR PETRIS: Aye.

9 SECRETARY WEBB: Petris Aye. Senator Beverly. Senator  
10 Lockyer.

11 CHAIRMAN LOCKYER: Aye.

12 SECRETARY WEBB: Lockyer Aye.

13 CHAIRMAN LOCKYER: Let's leave the roll open, because I  
14 believe it will be unanimous, and that looks better on the  
15 Floor.

16 Good luck to you, sir.

17 MR. CAMBRA: Thank you very much, Senators.

18 CHAIRMAN LOCKYER: Mr. Alvarado is our next appointee,  
19 to chat about the State Personnel Board.

20 Do you want to come on up.

21 MR. ALVARADO: Good afternoon, Senator.

22 CHAIRMAN LOCKYER: Would you care to start with any  
23 kind of statement or comment?

24 MR. ALVARADO: Thank you. I have a brief, short  
25 opening prepared statement, if that is all right.

26 CHAIRMAN LOCKYER: Sure.

27 MR. ALVARADO: I'm honored to be appointed to become a  
28 member of the State Personnel Board. I hope that I may garner

1 the same confidence of yourselves and your colleagues in  
2 confirming my appointment.

3 There are solid reasons I propose as to why I'm  
4 qualified to sit as a member of the State Personnel Board.

5 I believe myself, firstly, to be an independent thinker  
6 and an individual of integrity. Independence and integrity are  
7 requisite to any individual entrusted with maintaining a civil  
8 service system based upon merit such as ours.

9 In my opinion, the State Personnel Board is elegantly  
10 framed to assure neutrality and independence. Neutrality and  
11 independence and the ability to fairly pass judgement on appeals  
12 are vital in our roles.

13 In my role on the State Personnel Board, I have been  
14 and pledge to continue to be, if confirmed, neutral and  
15 independent in my thinking and judgements.

16 I have enjoyed a professional career balanced by work  
17 in the private sector and in the public sector. From my private  
18 sector perspective, I recognize just how a performance-based  
19 system can and should operate.

20 From my experience in the public sector, and I might  
21 add, this experience has been at the local, state, and federal  
22 government levels, I've worked within a system based on complete  
23 merit.

24 These two, private and public careers, have provided me  
25 with a special balance in viewing civil service from both a  
26 management and labor standpoint.

27 At the state level, as Undersecretary of State and  
28 Consumer Services, and confirmed by the Senate as Undersecretary

1 of Health and Welfare, I have been responsible for agencies of  
2 up to 37,000 employees. The ability to oversee the management  
3 of a dedicated work force of these numbers and complexities is  
4 not, I suggest, an insignificant attribute.

5 My tenure on the Sacramento County Civil Service  
6 Commission has provided me with additional background and direct  
7 experience of working with the civil service system. The  
8 necessity to be impartial and fair at that level was no less  
9 significant than at the State Personnel Board level.

10 Experience, dedication, neutrality, and independent  
11 judgement, these are important attributes I submit for you to  
12 consider as you determine my suitability in this confirmation  
13 process. I submit that I bring all these to the position, along  
14 with the desire to continue in some capacity to contribute to  
15 the public service.

16 I am honored to be here today to request your vote of  
17 confidence and will do my best to answer any questions which you  
18 might have.

19 Thank you.

20 CHAIRMAN LOCKYER: Thank you very much.

21 You were appointed in May of last year?

22 MR. ALVARADO: That's correct, Senator, yes.

23 CHAIRMAN LOCKYER: So, you've been through ten months  
24 or so.

25 MR. ALVARADO: Exactly.

26 CHAIRMAN LOCKYER: And also, let's see, now are  
27 managing CADA?

28 MR. ALVARADO: Right, The Capital Area Development



1 Authority, yes.

2 CHAIRMAN LOCKYER: That's been just a few months?

3 MR. ALVARADO: That was -- I started in December,  
4 December 11th, Senator, yes.

5 CHAIRMAN LOCKYER: Is the State Personnel Board work  
6 meant to be a job or is it meant to be a part-time thing? Can  
7 you tell.

8 I guess the way to ask that is, how much time does the  
9 Personnel Board take?

10 MR. ALVARADO: Personnel Board, we meet formally a  
11 day-and-a-half, two days a month. The reading goes beyond that.  
12 Like you and your staff, I take binders home every night and on  
13 weekends.

14 CHAIRMAN LOCKYER: So, a couple of days, plus the  
15 outside work that you have to do to prepare.

16 MR. ALVARADO: Yes, Senator, I would think that.

17 CHAIRMAN LOCKYER: CADA is more full time, I would  
18 assume.

19 MR. ALVARADO: It is full time, yes.

20 CHAIRMAN LOCKYER: There's no burden on doing both?

21 MR. ALVARADO: No.

22 CHAIRMAN LOCKYER: Other than as normal Type A  
23 workaholics that do these things? You can do both? It's not  
24 unnecessarily burdensome expectation?

25 MR. ALVARADO: No, not in my opinion, Senator.

26 The issue came up, however, you should be aware, when I  
27 was being considered for the position of Executive Director of  
28 CADA. The Board of CADA raised the question, and we talked about

1 that. So far, probably my wife feels that it's more of a  
2 commitment than I should have made.

3 CHAIRMAN LOCKYER: So, they thought it was okay?

4 MR. ALVARADO: They did, yes, Senator.

5 CHAIRMAN LOCKYER: Questions? Yes, Senator Petris.

6 SENATOR PETRIS: I'm curious. I meant to bring it up  
7 with the prior nominee.

8 CHAIRMAN LOCKYER: We're going to ask you about being a  
9 warden.

10 MR. ALVARADO: I know nothing, but I learned a lot in  
11 the last hour-and-a-half.

12 SENATOR PETRIS: I notice that the predecessor in each  
13 case resigned. Do you know why your predecessor resigned?

14 MR. ALVARADO: I do not.

15 MS. MICHEL: That's a term they use. It doesn't  
16 necessarily mean someone has resigned. Their term has expired  
17 and someone else is appointed. It doesn't necessarily mean a  
18 resignation.

19 SENATOR PETRIS: Well, it says here he replaced Alfred  
20 Villalobos, who resigned, and his term will end in 2005.

21 MS. MICHEL: It isn't the way you and I understand  
22 resigned.

23 SENATOR PETRIS: I see. What does it mean? Pushed out  
24 the window.

25 MS. MICHEL: It means the term ended and they've  
26 appointed somebody different.

27 CHAIRMAN LOCKYER: These are ten-year appointments?

28 MR. ALVARADO: They are.

1 CHAIRMAN LOCKYER: Why should we agree to anything for  
2 ten years? I want to think about that a little.

3 Are you going to quit when this Governor's gone?

4 MR. ALVARADO: I don't intend to, Senator.

5 CHAIRMAN LOCKYER: I don't think I want to confirm you  
6 either.

7 SENATOR BEVERLY: We asked Bud Carpenter whether he was  
8 going to ask for a second term.

9 CHAIRMAN LOCKYER: What did he say?

10 SENATOR BEVERLY: He'd think about it. I think he was  
11 about 78 at the time.

12 CHAIRMAN LOCKYER: I don't think he's 78. He's still  
13 there, isn't he.

14 MR. ALVARADO: Yes, Mr. Carpenter still serves.

15 CHAIRMAN LOCKYER: Other questions from Members? I  
16 have some, but I would defer to anyone else that might want to  
17 ask.

18 What I wanted to inquire about was the Department of  
19 Personnel Administration's desire to expand the Career Executive  
20 Assignment program. At least as I understand the general idea,  
21 these top managers are, in effect, exempt from civil service  
22 governance. And DPA has proposed to your Board, I guess in the  
23 last few months, to just transfer authority to DPA from the  
24 civil service board, the Personnel Board, the ability to decide  
25 on whether they should be transformed into CEA positions.

26 Do you have any thoughts about that whole matter? Has  
27 it been brought before the Board yet?

28 MR. ALVARADO: It was brought before the Board, or it



1 was to be brought before our Board at the January, 1996 meeting,  
2 Senator. That letter is signed by some of your colleagues who  
3 came before the Board and asked us to postpone our deliberations  
4 on the issue until March.

5 We did so, and I believe recently, last week, as a  
6 matter of fact, we received a similar letter requesting that it  
7 be postponed again in light of some other issues that yourself,  
8 I believe, and some of your colleagues had about the CEA  
9 delegation of authority that DPA is proposing.

10 CHAIRMAN LOCKYER: Do you have any thoughts about that  
11 general matter?

12 MR. ALVARADO: My general feeling, Senator, I guess the  
13 big picture is that I think there's a lot of talk about civil  
14 service reform in various ways right now. It's going on all  
15 around us, and probably any system that's been around for a long  
16 time, there are some things that should and could be changed, as  
17 long as merit is not one of them, in my opinion.

18 I believe that the CEA delegation of authority issue  
19 that has been brought up should probably be reviewed in the  
20 bigger context. I think we're probably going to see other  
21 bills, we're going to see other issues coming up, and that this  
22 particular issue would be best incorporated into an overview of  
23 all those issues coming up regarding civil service.

24 I find it somewhat difficult, personally anyway, to  
25 isolate it.

26 CHAIRMAN LOCKYER: What if nothing were to happen of a  
27 systemic change?

28 Here's my problem. We sit here, and we interview

1 people like Ward Connerly, who sound fine when they're sitting  
2 there answering our questions, and four months later are off on  
3 a track that makes me regret that I ever confirmed him.

4 And because of your political history, I have the same  
5 worry about you, that I'm going to hear something that sounds  
6 accommodating.

7 I think this is a dreadful idea, to have the Governor  
8 appointing political appointees all the way down to regional  
9 offices in places like Caltrans, so that the Regional Manager  
10 for Caltrans would become a political appointee, not a career  
11 person. I just think it's terrible. And it's typical of Pete  
12 Wilson's administration.

13 And you don't have to defend him. Just let me make my  
14 statement.

15 We've had an expansion which the L.A. Times and others  
16 have shown some numbers that something like 300 percent during  
17 the Wilson five years of political appointees at the top.

18 He wants to keep trying to contract out. I keep  
19 suggesting, fine, let's contract out those people at the top,  
20 not start with the janitor, which is a whole different subject  
21 that we don't need to get into.

22 But that's my reservation. I'm not sure I want to  
23 confirm anyone, especially anyone that's confirmed for 10 years,  
24 by a Governor who has philosophical goals different than mine  
25 unless I think there's some persuasive evidence that they're  
26 balanced, that they're not just going to take orders from the  
27 people that are sent over by the administration to these boards,  
28 like they've done consistently in Air Resources, in Board of

1 Forestry and other places.

2 They tell their appointees how to vote. It's obnoxious  
3 and offensive, and the people do it. They vote the way the  
4 Governor's political people tell them to vote.

5 Now, why should we confirm anyone like that? I fail to  
6 see any reason why, frankly.

7 And so, I want to know what are your specific feelings  
8 about having appointees that are exempt in positions down to  
9 regional department heads, regional directors of Caltrans,  
10 Social Services, and other executive agencies?

11 MR. ALVARADO: My personal feeling, Senator, is that  
12 there's a statutory definition of what a CEA assignment is. I  
13 believe that predates -- I think it came out in '63 or so.

14 I don't believe we should mess with that. And I think  
15 that that definition encompasses very high-level political --  
16 very high policy level individuals.

17 I think that there should be some -- I think beyond  
18 that, that's not what a CEA assignment should be. And your  
19 example of broadening it, I don't think it should be done unless  
20 we would look at whole civil service system and realize that  
21 that's the best way to reform the system, and I personally don't  
22 think it is.

23 But I respect your comments.

24 CHAIRMAN LOCKYER: This comprehensive review of civil  
25 service seems to be germinating. I understand there's an  
26 administration proposal somewhere that we haven't seen, and  
27 there is Little Hoover's report, and a number of other  
28 discussions.



1 MR. ALVARADO: Constitutional Revision Commission, I  
2 believe.

3 CHAIRMAN LOCKYER: Yes, they've talked about it.

4 MR. ALVARADO: There is a lot coming together. I think  
5 it's difficult to isolate them, Senator.

6 CHAIRMAN LOCKYER: Have you, in your ten months or  
7 whatever it's been now --

8 MR. ALVARADO: Just about ten months.

9 CHAIRMAN LOCKYER: Have there been requests in that  
10 were specific that were granted for CEA designation? Not just  
11 sort of blanket authority to delegate, but specific requests?

12 MR. ALVARADO: Not to my recollection, Senator, there  
13 have not.

14 CHAIRMAN LOCKYER: Other questions.

15 One of the responsibilities, I guess, of the SPA seems  
16 to have something to do with affirmative action. Could you tell  
17 us what that role or responsibility is?

18 MR. ALVARADO: Sure, yes, Senator.

19 I think as it goes to everything we do, I think that  
20 we're there to uphold the law, whatever that law may be. If the  
21 laws on affirmative action were changed by the Legislature or  
22 the voters, we as an independent body, I believe, have to uphold  
23 that particular law, whatever it may be.

24 In terms of affirmative action, I think it goes more to  
25 what we do in our relevant workforce activities. And the Supreme  
26 Court has basically defined what the relevant workforce is, and  
27 the State Personnel Board enforces that.

28 My recollection is that last year, there was about 97

1 percent compliance in state departments and agencies with the  
2 relevant workforce. That's not bad.

3 And in those instances where departments and agencies  
4 are not in full compliance, we're doing everything we can to  
5 help them manage their recruitment efforts so that we do get a  
6 good relevant workforce from which the state can select  
7 qualified people based on a merit principle.

8 CHAIRMAN LOCKYER: Was there a split board at all on  
9 the change from general labor market to relevant labor market?

10 I assume that was discussed and debated before the  
11 full Board?

12 MR. ALVARADO: It was, Senator, but I don't recall  
13 exactly. I don't recall what the vote was.

14 CHAIRMAN LOCKYER: Do you have any general philosophy  
15 you'd like to let us know about of any appropriate role of  
16 affirmative action remedies in state hiring and contracting?

17 MR. ALVARADO: In state contracting, Senator?

18 CHAIRMAN LOCKYER: Contracting may not be under your  
19 review but hiring certainly.

20 MR. ALVARADO: Hiring.

21 I believe philosophically that it's the role of a fair  
22 civil service system to make sure that we recruit as broadly as  
23 we can. And that means to minorities; it means to the  
24 workforce. And that we identify a labor force that, again,  
25 that's relevant to the job that is being recruited for, in the  
26 geographic area where the job is going to be, and that we do  
27 everything we possibly can to make sure we're reaching out to  
28 try and recruit good individuals, no matter what their ethic

1 background or race might be.

2 And I think that's the key to getting the state  
3 taxpayers really the best possible pool of employees. And if we  
4 can do that, then we can protect a civil service system that's  
5 based on that kind of merit through the whole process, whether  
6 they come before the State Personnel Board on appeals, whatever  
7 it might be, as long as we can keep running full circle back to  
8 the issue of merit and fairness.

9 Generally, that's my philosophy. And trying to  
10 exercise that in an independent manner is something that I think  
11 is vital to anyone who's on the State Personnel Board.

12 And if that member should ever be in conflict with the  
13 laws, then I think it's incumbent upon that member to step down  
14 and no longer serve on that kind of body.

15 CHAIRMAN LOCKYER: I guess there seems to be an issue  
16 also now with respect to personal services contracts, that I  
17 believe some have to be approved by the Personnel Board, and  
18 others are just outside of your purview.

19 Does that ring any bell as to any role you might have  
20 with personal service contracts with private outside firms? In  
21 effect, they wouldn't be state employees; they'd be contracting  
22 out.

23 Has that come before you during your time?

24 MR. ALVARADO: That has not, Senator.

25 CHAIRMAN LOCKYER: I guess our only questions there  
26 would be whether you have any convictions about those matters.  
27 If you want to talk about it, great.

28 MR. ALVARADO: I'd be happy to share my thoughts on



1 it.

2 I don't think contracting out of personal services  
3 contracts, per say, are bad or good. Again, just so long as we  
4 protect the civil service system, whatever that might be at that  
5 point in time, we protect it and we uphold Article VII in the  
6 Constitution that says we'll have a fair and unbiased civil  
7 service system, then it is incumbent upon us to make sure that  
8 we do that.

9 If contracting out can be done, and it's more efficient  
10 for the state and the taxpayers, and it doesn't harm civil  
11 service as we know it, then we should do it.

12 As long as we compare apples with apples when we're  
13 making the comparisons between contracting out and civil  
14 service.

15 CHAIRMAN LOCKYER: I guess there have been number of  
16 studies. The one that's been most controversial around here has  
17 been Caltrans contracting out. And everyone has their own  
18 study.

19 The one I most recently saw was Alan Post's, which  
20 suggests it's more expensive to contract out in Caltrans than it  
21 is to keep them internal. But there's five or six different  
22 studies banging around on that issue.

23 Senator Ayala.

24 SENATOR AYALA: Mr. Alvarado, how large is the backlog  
25 of cases for appeal or review at the State Personnel Board at  
26 the moment?

27 MR. ALVARADO: We're actually doing very well,  
28 Senator. We have halved the number -- the length of time it

1 takes to get through a case.

2 My understanding in talking to the staff just last  
3 week, we're almost getting -- we're starting to get complaints  
4 from people saying we're moving too quickly.

5 All of our cases are within the statutory time limit  
6 right now, is my understanding, Senator.

7 SENATOR AYALA: So, you're current with that, and you  
8 don't have a backlog?

9 MR. ALVARADO: Right. We've done some things. We've  
10 looked at our minor adverse actions, and we're dealing with  
11 those in a different way so we can get those through faster.

12 I think, especially in the last eight or nine months --  
13 and I have to hand that basically to the staff and our new  
14 Executive Director, who on a day-to-day basis with his  
15 attorneys, is really making the process a lot more expedient.

16 SENATOR AYALA: Thank you.

17 CHAIRMAN LOCKYER: Well, as a fellow alumni of the  
18 Monterey Institute, I may have some burden also to defend you.

19 MR. ALVARADO: That's a rarity. We're very few. We  
20 aren't like that prison population forming their alumni. We are  
21 very few, Senator.

22 CHAIRMAN LOCKYER: You're right. It was only a  
23 semester for me while I was serving time after being kicked out  
24 of UC for being at Sproul Hall and being a bad boy. Free speech  
25 movement, some time before you were at Monterey.

26 Other questions.

27 Anyone here who cares to comment?

28 SENATOR BEVERLY: Move we recommend confirmation.

1 CHAIRMAN LOCKYER: Call the roll.

2 SECRETARY WEBB: Senator Ayala.

3 SENATOR AYALA: Aye.

4 SECRETARY WEBB: Ayala Aye. Senator Lewis.

5 SENATOR LEWIS: Aye.

6 SECRETARY WEBB: Lewis Aye. Senator Petris.

7 SENATOR PETRIS: Aye.

8 SECRETARY WEBB: Petris Aye. Senator Beverly.

9 SENATOR BEVERLY: Aye.

10 SECRETARY WEBB: Beverly Aye. Senator Lockyer.

11 CHAIRMAN LOCKYER: Aye.

12 SECRETARY WEBB: Lockyer Aye. Five to zero.

13 CHAIRMAN LOCKYER: Good luck.

14 MR. ALVARADO: Thank you very much, Senators.

15 CHAIRMAN LOCKYER: We have a call on Mr. Cambra, the  
16 Warden. If you want to call the absentees, those who were not  
17 present.

18 SECRETARY WEBB: Senator Ayala?

19 SENATOR AYALA: Aye.

20 SECRETARY WEBB: Ayala Aye. Senator Beverly?

21 SENATOR BEVERLY: Aye.

22 SECRETARY WEBB: Beverly Aye, five to zero.

23 [Thereupon this portion of the

24 Senate Rules Committee hearing was

25 terminated at approximately 4:35 P.M.]

26 --ooOoo--

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1  
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